

(1951) 03 PAT CK 0005
In the Patna High Court
Case No : M. J. C. No. 79 of 1951

Gopeshwar Prasad Sahi

APPELLANT

Vs

State of Bihar and others.

RESPONDENT

Date of Decision : 14-03-1951

Acts Referred:

Constitution of India, 1950 — Article 14, 19(f), 226, 32
General Clauses Act, 1897 — Section 24
Majority Act, 1875 — Section 3

Citation : AIR 1951 Patna 570

Hon'ble Judges : Sarjoo Prasad, J; Ramaswami, J

Bench : Division Bench

Advocate : P.R. Das, Balbhadra Pd. Singh, Ishwarinandan Singh and Mrs. H. Kumar, for the Appellant; Advocate General and Govt. Pleader for The State, for the Respondent

Judgement

Ramaswami, J.—In this case the petnr. Maharaja Gopeshwar Prasad Sahi has obtained a rule calling upon the Board of revenue & other resps. to show cause why a writ in the nature of Mandamus should not be issued commanding them to withdraw from the management of the Hathwa Raj State. Cause was shown against the rule by the Advocate General on behalf of the Board of Revenue & other resps. to whom notice of rule was directed to be given.

2. The petnr. is the son of Maharaja Bahadur Guru Mahadevasharam Prasad Sahi who was the last holder of the ancient impartible estate known as "Hathwa Raj". On 4-5-1940 the late Maharaja Bahadur had made an appln. u/s. 6 (e), Court of Wards Act, for being declared to be a disqualified proprietor. On 11-5-1940 the Ct. of Wards made a declaration that the Maharaja Bahadur was a disqualified proprietor within the meaning of the section & that it was expedient in the public interest that his estate should be managed by the Ct. of Wards. On the same date the Ct. of Wards notified u/s. 7 read with Ss. 28 & 35 of the said Act that it had determined to take the property of the late Maharaja Bahadur under its charge & directed that possession be taken of such property on its behalf. Acting

under the powers conferred u/s. 7 of the Act the Ct. of Wards also notified that they took charge of the person & property of the two sons of the Maharaja Bahadur, viz., petnr. Gopeshwar Prasad Sahi & brother Brijeshwar Prasad Sahi who were admittedly minors on that date. It is alleged in, the affidavit that on 11-5-1940 when the Ct. of Wards made the order the petnr. had no property of his own & in consequence the order of assumption was void in its inception & was inoperative. It is stated that on 6-3-1950 the petnr. completed the age of 18 years & attained majority. On 20-1-1951 Maharaja Bahadur Guru Mahadevashram Prasad Sahi died & the petnr. succeeded to the impartible estate & became the absolute owner thereof. On 30-1-1951 the petnr. requested the Ct. of Wards & the State of Bihar to make over to him charge of the estate & place him in direct control & management thereof. In spite of this demand the Ct. of Wards was illegally continuing to hold charge of the estate & the other resps. were intermeddling with the affairs of the estate. The petnr. alleged that the Ct. of Wards was under legal obligation to release the estate upon the death of the late Maharaja Bahadur. The petnr. therefore prayed to the H. C. for issue of a writ in the nature of Mandamus directing the resps. to withdraw from the control & management of the Hathwa Raj.

3. In the counter-affidavit the resps. state that the Hathwa Raj was a joint family in partible estate which developed by survivorship on the late Maharaja Bahadur. Apart from the interest which he had in the ancestral estate the petnr. had personal properties described in para. 7 of the Counter-affidavit. Exercising the power conferred u/s. 7 of the Act the Ct. of Wards took charge of both the person & properties of the petnr. & his brother Rajeswar Prasad Sahi & appointed separate guardians from time to time. Since 4-2-1950 the Manager of Hathwa Raj was the guardian of the properties of the petnr. & previous to him Pandit Ram Bahadur Sharma & Mr. B. N. Dutta, Dewan, had been acting as guardian.

4. In showing cause against the rule, the Advocate General objected at the outset that the H. C. ought not to issue the writ of Mandamus since the petnr. had an alternative remedy by way of suit. But Mr. P. R. Das maintained that Art. 226 of the Constitution is not confined to the issue of prerogative writ & the existence of an alternative legal remedy is not a relevant point to be taken into consideration. Art. 226 of the Constitution states:

(1) Notwithstanding anything in Art. 32, every H. C. shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Govt., within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus; prohibition, "quo warranto" & certiorari, or any of them, for the enforcement of any of the rights conferred by part III & for any other purpose.

2. The power conferred on a H. C. by Cl. (1) shall not be in derogation of the power conferred on the S. C. by Cl. (2) of Art. 32.

5. Mr. P. R. Das urged that though the article has in terms only conferred a power it is manifest from the context & scope of the article that the power is coupled with a duty & the H. C. is bound to issue the writ when a case arises for the enforcement of a legal right.. In support of his argument learned counsel refd. to "Fredaric Guilder Julius v. Lord Bishop Of Oxford", (1880) 5 A C 214 : (49 LJQB 577), in which the question to be determined was the construction put upon S. 3, Church Discipline Act which enacted that in every case of a clergyman charged with an ecclesiastical offence "it shall be lawful" for the Bishop on the application of any party complaining thereof, or, if he shall think fit, of his own mere motion, to issue A commission under his hand & seal to certain persons for the purpose of making enquiry as to the grounds of such charge or report. It was held by the House of Lords that the section gave the bishop complete discretion to issue or decline to issue such commission. Having regard to the preexisting state of the law & the character of the Bishop's office, it was consd. that it was his duty, before issuing the commission, to determine on the expediency of instituting the prosecution, taking into his consideration the nature, credibility, or importance of the charge, & the status, solvency, & religious character of the complainant as well as the general interests of the Church. At p. 214 Lord Cairns states:

The words "it shall be lawful" are not equivocal. They are plain & unambiguous. They are words merely making that legal & possible which there would otherwise be no right or authority to do. They confer a faculty or power & they do not of themselves do more than confer a faculty or power. But there may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised which may couple the power with a duty, & make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.

Lord Selborne's view was that a phrase such as "it shall be lawful" as not ambiguous & susceptible either of a discretionary or an obligatory sense but their meaning is the same whether there is, or is not a duty or obligation to use the power which they confer. They are potential & never in themselves significant of any obligation. The question whether a Judge or public officer to whom a power is given by such words is bound to use it upon any particular occasion or in particular manner must be solved "aliunde" & in general, it is to be solved from the context, from the particular provisions or from the general scope & abject of the enactment conferring the power. Similarly Lord Penance said that the words "it shall be lawful" are distinctly words of permission only & the true question is not whether they mean something different but whether having regard to all the circumstances - to the person enabled to the general object of the statute & to the persons for whose benefit the power may have been intended to be conferred they do or do not create a duty in the person on whom it is conferred to exercise it. It is not enough that the thing empowered to be done should be for the public benefit in order to make it imperative to exercise that power on all

occasions falling within the statute. In the present case, the question is whether Art. 226 should be construed as conferring a discretionary power, or imposing a duty when its exercise is called for. In my opinion there is nothing, in the language or purpose of Art. 226 which shows that the words were intended to be imperative in every case. The Constitution makers could never have intended that the H. C. should issue the writ even if the petnr. had a alternative legal remedy which was equally adequate. Otherwise the ordinary legal procedure will be abrogated, payment of proper C. F. will be avoided, the H. C. will be asked to decide complicated questions of right upon affidavits - a new & cheap i;ud-gate of litigation will be opened. The jurisdiction may be invoked in cases of so trifling or insignificant nature that no one having discretion in the matter would allow it to be litigated. In my opinion Art. 226 cannot be so construed as to make the exercise of the power conferred on the H. C. obligatory in every case. The remedy given by Art. 226 is an, extraordinary one & can be invoked only in exceptional circumstances by those who have no alternative remedy by way of suit or otherwise.

6. Mr. P. R. Das nevertheless maintained that there was no alternative remedy, that no suit lay against the State for the tortious act committed by the act of the Manager of the Ct. of Wards. Even if such a suit was competent the determination of the question will take a considerable time, the suit will become infructuous & justice will be denied. It was contended that the Ct. cannot refuse to issue the writ unless the alternate remedy was equally appropriate, beneficial & convenient Reference was made to "Rex v. Poplar Borough Council No. 1", (1922) 1 KB 72 " in which the Ct. granted a writ of Mandamus on the ground that the alternative remedy by distress was wholly inadequate & that Mandamus was the only effective means of securing the performance of the public duty. To a similar effect is the case of "Reg v. Leicester Guardians", (1899) 2 QB 632, when the Ct. decided that the duty imposed upon the guardians by S. 5, Vaccination Act, to appoint a vaccination officer may be enforced by a writ of Mandamus through the local Govt. Board on whose appln. the writ was issued had itself power under the statute to appoint a fit person to act as vaccination officer on the default of the guardinas. There is great force in the contention of Mr. P. R. Das; & if it is established that the repps, are in illegal possession of the Hathwa Raj, I should be prepared to hold that Mandamus is the proper form of procedure in this particular case & a writ may be issued to enforce the obligation imposed on the resps.

7. The main debate therefore turns on the question whether the Ct. of Wards had jurisdiction to take charge of the person & property of the petnr. u/s. 7, Ct. of Wards Act, by the Assumption Order dated 11-5-1940.

8. S. 7, Ct. of Wards Act states:

Whenever the sole proprietor of an estate, or all the joint proprietors of an estate are disqualified as provided in the last preceding section, the Ct. shall have power to take charge of all the property to every such proprietor or joint-

proprietor within its jurisdiction, & of the person of any such proprietor or joint-proprietor who is resident within its jurisdiction; & also of the person & property of any minor member of the family of any such proprietor or joint-proprietor who has an immediate or reversionary interest in the property of such proprietor or joint-proprietor.

9. Mr. P. R. Das argued in the first place that the petnr. had no immediate or reversionary interest in the impartible estate before the death of the late Maharajah Bahadur, that the Ct. of Wards could not therefore legally take charge of the person & property of the petnr., that the latter was not constituted a ward of the Ct. Mr. P. R. Das relied upon "*Surtaj Kuari v. Deoraj Kuari*", (10 All 272), in which Sir Richard Couch held that an impartible estate was a joint family property in no sense & that the son's right at birth under the Mitakshara, was so connected with the right to share in & to obtain partition of the estate, that it does not exist independently of the latter right. But this doctrine was definitely negated by Lord Dunedin when delivering the judgment of the Board in "*Bajinath Pd. Singh v. Tej Bali Singh*" (48 IA 195). In that case it was decided that property, though impartible, may be the ancestral property of a joint family, & that in such cases the successor falls to be designated according to the ordinary rule of the Mitakshara. "The keynote of the whole position" (to adopt the phrase of Lord Dunedin) is not that property which is not joint property devolves by virtue of custom as though it had been joint - but that the general law regulates all beyond the custom, that the custom of impartibility does not touch the succession since the right of survivorship is not inconsistent with the custom. Hence the estate retains its character of joint family property, and devolves by the general law upon that person who, being in fact and in law Joint in respect of the estate, is also the senior member in the senior line. In "*Shiba Prasad Singh v. Prayag Kumari*", (59 IA 331 at p. 345), Sir Dinshaw Mulla emphatically states:

The birth right of the senior member to take by survivorship still remains. Nor is this right a mere "spes successionis" similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is right which is capable of being renounced & surrendered.

The same view has been affirmed by the Judicial Committee in "*Comr. of income tax v. Krishna Kishore*", (68 IA 155), in which the question for determination was whether the income of the impartible estate, to which the assessee had succeeded by rule of primogeniture prevailing in his family governed by the Mitakshara, was chargeable in his hands in the status of "individual" the assessee being the head of the family consisting of himself and his son. The Judicial Committee answered the question in the negative holding that the estate is joint family property and that the assessee as individual cannot be charged in respect of it u/s 9 of the Indian income tax Act. At p. 168, Sir John Rankin states:

Though the co-ownership of the junior member may be "in a sense" only, carrying no present right to joint possession, if the question be whether the

Hindu undivided family or the present holder is owner of the estate the answer of the Hindu law is that it is joint family property. The assessee as an individual cannot therefore be charged in respect of it under S. 9 of the Act.

10. In view of the principle established by these authorities I am of opinion that the petnr. had a reversionary if not an immediate interest in the impartible estate of Hathwa Raj within the meaning of S. 7 of the Ct. of Wards Act.

11. Mr. P. R. Das maintained that the phrase "reversionary interest" in S. 7 should be construed in a technical sense, to mean the interest of the heirs of the last full owner to succeed on the death of a Hindu widow. Learned counsel referred to "*Pugh v. Ashutosh Sen*", (56 IA 93), in which the question was whether the word "conversion" which occurs in Art. 48 of the Limitation Act ought to be construed in a technical sense. The Judicial Committee held that the word must be so construed in the context of the Act & it must be presumed that when the legislature has deliberately used a term which has a known legal significance in law, it has attached to that term that known legal significance. But the material facts of the present case are widely different. The primary rule is that words are to be construed in their popular sense & in the present case, there is no reason suggested for limiting the natural & ordinary meaning of the word used. On the contrary, it is obvious that the Ct. of Wards Act is not a special statute confined to the case of Hindu proprietors. Taking into account the object & scope of the enactment I am satisfied that the expression "reversionary interest" is not used in a technical sense, but the expression must be construed in a popular & ordinary sense.

12. Mr. P. R. Das next urged that in the lifetime of the late Maharaja Bahadur the petnr. had no personal properties of his own, that the Ct. of Wards had therefore no legal authority to take control of "the person & property of the petnr". In my opinion, this argument is not sound. For it is plain, on a proper construction of S. 7 of the Ct. of Wards Act, that only two precedent conditions are necessary in order to confer jurisdiction on Ct. of Wards to act. The first condition is that the proprietor of the estate should be disqualified u/s. 6 of the Act, & secondly the minor member of the family ought to have an immediate or reversionary interest in the property of such proprietor. Provided that these conditions exist, the jurisdiction of the Ct. of Wards is complete. In the present case there is no question that these conditions were present & it follows that by the assumption order dated 11-5-1040 the petnr. was duly constituted a ward of the Ct. within the meaning of S. 3, Ct. of Wards Act.

13. In my opinion it is not material to enquire whether the petnr. had personal properties of his own at the time the Ct. of Wards made the assumption order. It is not relevant in determining the question of jurisdiction. But the question was elaborately argued on behalf of both parties & I shall, (sic) deference to the argument of the learned counsel, proceed to consider whether the petnr. had personal properties of his own & whether the Ct. of Wards took charge of such personal properties.

14. For the resp. it was contended that at the time when assumption order was made the petnr. had (1) ornaments & jewelleryes presented to him in 1938 on the occasion of his mundan, (2) ornaments, jewelleryes & gold coins kept in a locker of the Imperial Bank of India, (3) post office Defence Savings Certificates purchased in his name.

But the petnr. alleged that item No. 1 which constituted ornaments & jewelleryes presumed at the time of mundan belonged not to him but to the estate according to the custom. As regards the savings certificates Mr. P. R. Das pointed out that they were purchased between 11-11-1940 & 19-4-1941 out of the savings of the personal allowance paid to the petnr. Learned counsel contended that the purchases were made after the amending Act of 1939, viz., Bihar Act IV (4) of 1940 which came into force & so ought not to be taken into account. I do not propose at this stage to examine whether this contention is valid for, with respect to the third item - the ornaments & jewelleryes" kept in the locker of the Imperial Bank, I am satisfied upon the affidavits that the Ct. of Wards took charge. In the petnr's affidavit it is stated that there was a dispute as regards ownership for a period at six years from the time the Ct. of Wards assumed charge until by lis award dated 11-6-1944 Mr. Y. S. Godbole, Member of the Board of Revenue, declared that the ornaments & jewelleryes should belong to the petnr. but they may remain in charge of the mother who was then living with him. From Annexure X 3 it appears that Mr. Godbole agreed that the "jewellery may remain in charge of the mother & she would do well to keep it in a separate box with another box containing her own jewellery in the same locker."

Mr. P. R. Das then reld. to S. 35, Ct. of Wards Act, & contended that unless the Ct. of Wards had taken actual possession of the jewellery the Ct. cannot be said to be in charge of the property. S. 35 enacts:

Whenever the Ct. has determined to take the person or property" of a disqualified proprietor under its charge, whether in accordance with an order of the Civil Ct. or otherwise, the Ct. shall make an order declaring the fact & directing that possession be taken of such person & property or of such property on behalf of the Ct., & the Ct. shall be held to be in charge of such property from the time when possession shall have so taken.

15. In my opinion the contention of the learned counsel is not sound. Possession is taken u/s. 35 as soon as the formal direction to take possession is made.

16. I think that the word "so" in S. 35 refers to the particular method of taking charge & the phrase "possession shall have been so taken" should be construed to mean "when possession shall have been taken by an order directing possession to be taken". This view is supported by "Lachminarain v. Ibrahim Hussain", (13 Pat 596), in which the applts. had obtained a money decree against the resp., whose property had been taken in charge in 1902 under the (Bengal) Ct. of Wards Act, 1879.

They applied to execute the decree against property which the resp. had

inherited upon his brother's death in 1919, but which was in the adverse possession of a claimant thereto. Upon the brother's death the Coir, issued a notfn. that the Ct. of Wards had taken the property into charge. Later, before the appln. to execute was made, the manager of the Ct. of Wards was ordered to take possession, but since the claimant still remained in possession the manager could not obtain actual possession. Upon these facts the Judicial Committee held that the Ct. of Wards had taken possession within the meaning of S. 35 If the Act so as to bring the property into charge, & that accordingly S. 60 A, precluded it from being taken in execution. At p. 606 the report states:

The learned Subordinate Judge, in his judgment failed to appreciate the governing importance of the fact that throughout the property in question was in the adverse possession of the Mutawalli, & that from him actual possession could only be obtained by legal process, which had in fact been instituted & is not yet finally concluded. Then- Lordships agree with the H. c. m their view that "possession" under the Act must depend upon the nature of the interest in the property in question of the disqualified proprietor. It is, for instance, assumed by the Act that a reversionary interest is one of which possession can be taken.

17. In the present case, upon the facts stated in the petnr's affidavit I am of opinion that the Ct. of Wards had taken charge not only of the person but of the property of the petnr. after the assumption order u/s. 7 was made.

18. Mr. P. R. Das suggested in the next place that by the enactment of Bihar Act IV (i) of 1940 section 7 of the Ct of Wards Act has been materially amended. Learned counsel pointed out that the amended section did not en,power the Ct. of Wards to take charge of the person & property of the minor member of the family of the proprietor who had voluntarily applied to the Ct. to have his properties placed under the management of the Ct. Bihar Act IV (4) of 1940 came into force with effect from 28-6-1940 & it was contended that the order of assumption made by the Ct. of Wards ceased to have any legal effect from that date. In support of his contention learned counsel refd. to S. 28, Bihar General Clauses Act, & argued that there was a repeal & re-enactment within the meaning of this section. It is impossible in my opinion to accept the argument of the learned counsel. There is no question of any repeal or re-enactment. What actually happened was repeal of a part of S. 7 by the Amending Act of 1940. It is an established rule of construction that retrospective operation is not to be given to a statute so as to impair the existing right or obligation unless the intention is expressed in unequivocal terms. The principle is recognised in leading authorities. In "Moon v. Durden" (1848) 2 Ex 22, an action was brought upon a wager, commenced before the passing of the Gaming Act, 1845, which enacts that all contracts by way of wagering "shall be null & void", & that "no suit shall be brought or maintained" for recovering money alleged to be won upon a wager. This Act was passed while the action was pending, & the question was whether it operated to defeat the pltf's claim. The Ct. of Exchequer decided that it did not & the action brought could be continued. In another case "Knight v. Lee", (1893) 1

Q B 41, the Divisional Ct. had to consider the Gaming Act, (1892) (55 & 56 Vict. c. 9), which enacted that a promise to repay a person moneys paid by him on a wager void under the Gaming Act, 1845, should itself be void & provided by S. 1 that:

No action shall be brought or maintained to recover any such sum of money." In that case the pltf. before the passing of the Gaming Act, 1892, paid losses on the deft's behalf, but he did not issue his writ until after the Act was passed. It was held by Mathew & Bruce JJ. that the action was lightly brought & that the Act did not destroy the vested claims or bar the commencement of fresh actions to enforce them. In "Henshall v. Porter", (1923) 2 KB 193, the question turned on S. 1, Gaming Act 3922 by which no action under S. 2, Gaming Act, 1835, to recover back money paid in respect of Gaming debts "shall be entertained in any Ct.". The pltf. after the Act of 1922 came into force, issued a writ in respect of causes of action which had arisen before Act came into force. It was held that the pltf's cause of action, vested in him before the Act of 1922 came into force, was not divested on the Act coming into force, & that he was entitled to recover.

19. I consider that the Ct. of Wards validly assumed in May 1940 jurisdiction over the person & property of the petnr. who was duly constituted a ward of the Ct. & that the amending Act of 1940 could not affect the rights & obligations already vested, nor could it alter the juridical status of the petnr. as a ward of the Ct.

20. If this view is correct, it is plain that under S. 8 read with the definition of a "ward" in S. 3, of the Act the Ct. of Wards is not bound to release the estate from its charge unless the petnr. attains twentyone years of age. The same result will be reached if S. 3, Majority Act, is applied to the case. S. 3 states:

Age of majority of persons domiciled in British India. - Subject as aforesaid, every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chap. XXXI, Civil P. C. has been or shall be appointed or declared by any Ct. of Justice before the minor has attained the age of eighteen years every minor of whose property the superintendence has been or shall be assumed by any Ct. of Wards before the minor has attained that age, shall, notwithstanding anything contained in the Indian Succession Act X (10) of 1865 or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years" & not before: Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority When he shall have completed his age of eighteen years & not before.

21. It is necessary to state that in an earlier portion of this judgment I have held that the Ct. of Wards had assumed charge & therefore superintendence not only of the interest of the petnr. in the impartible estate but also of his personal ornaments & jewelleryes.

22. Dr. Sultan Ahmad, who appeared at one stage in support of the rule,

contended (hat the Ct. of Wards had assumed charge of the person & properties of the petnr. not because the petnr. was disqualified but merely because petnr. Was the minor son of the late Maharaja Bahadur whom the Ct. of Wards had, on his own appln. disqualified. Learned counsel pointed out that after the death of the Maharaja Bahadur the position has signally changed & in the language adopted by the learned counsel

the link of relationship has snapped & the Ct. of Wards had no legal justification to retain charge of Hathwa estate.

The argument is attractive but wholly untenable. As soon as the Ct. of Wards assumed charge of the person & property of the petnr. by the Assumption order of 1940, the petnr. was duly constituted a ward of the Ct. within the meaning of S. 3, Ct of Wards Act. S. 8 of the Act (sic) which Dr. Sultan Ahmad refd.) expressly provides that

whenever the circumstances of any ward become such that the Ct. could not take charge of him or of his property, if he were not under its charge already, the Ct. shall be bound to release from its charge such person & his property.

It should be noticed that S. 3 of the Act defines a minor to be "a person who has not completed the age of twenty-one years". It follows that u/s. 8 the Ct. of Wards is not bound to release the estate of the petnr. till he attains the age of twenty-one years.

23. Lastly Mr. P. R. Das argued that S. 3, Indian Majority Act, was unconstitutional since It prescribed a dual age of majority, one for persons of whose property superintendence has been assumed by the Ct. of Wards or of whose person or property a guardian has been appointed by a Ct. of Justice, & the other for persons whose property is not under such superintendence or for whom no guardian has been appointed by civil Ct. Learned counsel maintained that the statute made discrimination between two classes of persons & it was in violation of the guarantee of equal protection of laws made by Art. 14 of the Constitution. In my opinion the argument is untenable. If the policy & object of the Ct. of Wards Act is examined it is apparent both from the nature of jurisdiction over disqualified proprietors & by nature of the power entrusted to the ct. of Wards that the whole scheme of dealing with females, minors & persons of unsound mind as regards their estates was an essential part of the arrangement brought into force for collection of the land revenue & the Permanent Settlement of Bengal. From the beginning, the jurisdiction exercised by the Ct. of Wards was an exercise essentially of sovereign power - power to take over the estates of persons unable to manage their own estates in order that the estates may be properly managed & Govt, revenue may be rendered safe. Public interest & the interest of the revenue were clearly the object of the powers conferred by the Act (Sue the judgment of Rankin C. J. in "Secretary of State v. Shreegobinda", (59 Cal 1289). In view of the scope & object of the enactment it is plain that the minority of the persons under the charge of the Ct.

of Wards was deliberately extended to -the age of twenty-one years so that the estates may be properly administered & the Govt, revenue adequately protected. The selection of the age limit for legal majority is artificial in any case. If the legislature has fixed a different age-limit in the case of wards whose estates the Ct. of Wards has taken charge, it cannot be said that the classification adopted is "prima facie" unreasonable.

24. In my opinion the discrimination in S. 3, Majority Act does not violate Art. 14 of the Constitution. The equal protection clause does not prevent classification & does not prevent the drawing of lines. The clause only requires that the classification must be reasonable & not arbitrary. In truth all legislation involves classification of some sort & what Art 14 means is that any classification must be reasonably relevant to the purpose of good Govt. In this context, reference should be made to the important principle that the Ct. ought to make every possible presumption in favour of the constitutionality of an enactment. The principle is specially important when the issue of constitutionality before the Ct. is one depending on some question of degree.

It must be presumed that a Legislature understands & correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience & that its discriminations are based upon adequate grounds

"Middle-ton v. Texas Power and L. Company", (1919) 249 US 152: (63 L Ed 527).

The onus is therefore on the petnr. to establish that the classification adopted by the legislature in S. 3, Majority Act, is arbitrary & unreasonable. No material has been furnished in the petnr's affidavit to support his allegation. No material has also been placed by learned counsel to substantiate his argument. To adopt the language of Holmes J.:

It is the usual last resort of constitutional arguments to point out shortcomings of this sort. But the answer is that the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, & seeks to bring within the lines all similarly situated so far & so fast as it means allow. (Buck 7. Bell", 274 US 208).

25. For these reasons I hold that the Ct. of Wards had jurisdiction to assume charge in May 1940 of the person & property of the petnr., that the notfn. to that effect was legal & valid, that the petnr. was duly constituted a ward of the Ct., that u/s. 8 of the Act the Ct. of Wards is not bound to release from its charge the estate of Hathwa Raj unless the petnr. attains 21 years of age.

26. In my opinion the rule must be discharged & the appln. must be dismissed with costs to the resps. Hearing fee 10 gold mohars.

27. Sarjoo Prasad, J.: This is an appln. on behalf of Maharaja Gopeshwar Prasad Sahi under Art. 226 of the Constitution. The petnr. herein prays for an appropriate direction, order or writ upon the opposite party, the State of Bihar & its agents, commanding them to forbear from retaining charge of the estate of

the petnr. & to withdraw from the management thereof.

28-29. The facts on which this petn. is based may be stated as follows: (After stating the facts & the contentions of the parties the Judgment proceeds thus:)

30. In so far as the facts are concerned, it would appear that the only difference between the parties is as to whether or not the minors including the petnr. had or had not on the date of the assumption order, namely, on 11-5-1910, any personal property of their own. The other facts do not appear to have been denied & are rather admitted by the parties. In regard to the claim of the petnr. that he had attained majority even his age is not disputed. In fact, on the face of the assumption order dated 11-5-1940 he would appear to be 18 years 2 months 5 days. There can be, therefore, no doubt that he has since then attained the age of 18 years. On behalf of the opposite party, however, it is claimed that this alone is not sufficient to enable him to obtain release of his estate because the Ct. of Wards can continue to hold charge of the estate until he attains the age of 21 years, a minor under the Ct. of Wards being a person who has not completed that age.

31. The two main questions which, therefore arise in the case are (1) whether an appln. for a writ under Art. 226, Constitution Act, is maintainable, & (2) whether the petnr. still continues to be a ward of the Ct., & as such, the retention of the charge of his estate by the Ct. of Wards Is lawful. There are several subsidiary questions involved under these two main heads which will be discussed in their appropriate place.

32. It has been already pointed out that the petnr. in this case claims the issue of a writ on the ground that he has an inviolable right to hold his property in his possession & to manage the same at his own sweet will & pleasure, & that the opposite party have no statutory right to take or retain charge of the same; on the contrary, that they have a legal obligation to release the estate in favour of the petnr. The allegation, therefore, is that the conduct of the opposite party is in violation of the fundamental right of the petnr. to hold & manage his property as contemplated by Art. 19 (f) of the Constitution. Under Art. 226 the H. C. has power

throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Govt., Within those territories directions, orders, or writs Including writs in the nature of "habeas corpus, mandamus", prohibition "quo warranto" & "certiorari", or any of them, for the enforcement of any of the rights conferred by Part III & for any other purpose.

Part III of the Constitution, it may be stated, deals with fundamental rights. There can be no doubt on the clear provisions of this Article that the H. C. has power to issue writs not only for the enforcement of fundamental rights" but "for any other purpose". But the words "any other purpose" must mean "the enforcement of any legal right & the performance of any legal duty" Although the

powers of this Ct. to issue writs under the constitution are very wide, it has been rightly held that the remedy provided by Art. 226 must remain an extraordinary remedy to be used "where ordinary legal process cannot give adequate and prompt relief; vide *Bagaram v. State of Bihar*", (29 Pat 491). Mr. P. R. Das on behalf of the petnr. has refd. to a decision in "*The Mayor of Rochester v. The Queen*", (1858) 120 E R 791, where Baron Martin observed:

That Ct. has power, by the prerogative writ of. mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, & ought to be used when the law has provided no specific remedy, & justice & Govt, require that there ought to be one for the execution of "the common law or the provisions of a statute; Comyns's Digest, Mandamus (A).

33. He further stresses the fact that where the remedy would be inconvenient to the subject & injurious to the community, the only & most effective remedy is the remedy by issue of a writ to correct that injustice or injury to the subject. He also draws our attention to another passage in the judgment of Baron Martin where the learned Baron remarked:

Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable.

Mr. Das has also reld. upon another well-known English precedent which is often cited at the Bar in support of such applications, namely the case of "*Frederic Guilder Julius v. Lord Bishop of Oxford*", (1880) 5 AC 214). In this case the Lord Chancellor (Earl Cairns) made the following classical observation:

The words "it shall be lawful" are not equivocal. They are plain & unambiguous. They are words merely making that legal & possible which there would otherwise be no right or authority to do. They confer a faculty or power, & they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, & make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.

34. The same noble Lord, however, proceeded to state:

the words "it shall be lawful" being according to the natural meaning permissive or enabling words only, it lies upon those as it seems to me, who contend that an obligation exists to exercise this power, to shew in the circumstances of the case something which, according the principles I have mentioned creates this obligation.

35. Mr. Das contends on the authority of these dicta & on the observations of

Lord Blackburn in the same case that where "the object of giving the power is to enable the donee to effectuate a right, then it is the duty of the donee of the power to exercise the power when those who have the right call upon him so to do."

He points out that in the present case his appln. is to effectuate a right, & therefore, the power conferred upon the H. C. on the authority of Art. 226 must be exercised by this Ct. as a matter of duty, & there is no "discretion left in the Ct. to refuse the prayer. I am afraid the language of the noble Lords is not capable of bearing that extreme interpretation & must be read in the light of the context. In fact, each of their Lordships who decided the case expressly pointed out that there must be something in the circumstances of each case so as to create an obligation on the part of the Ct. to issue a writ of the nature prayed for. I have already refd. to the dictum of Lord Cairns. Lord Penzance who was also a party to the decision & agreed with the Lord Chancellor said as follows:

The words "it shall be lawful" are distinctly words of permission only - they are enabling & empowering words. They confer a legislative right & power on the individual named to do a particular thing & the true question is not whether they mean something different, but whether, regard being had to the person so enabled to the subject-matter to the general objects of the statute, & to the person or class of persons for whose benefit the power may be intended to have been conferred - they do or do not, create a duty in the person on whom it is conferred, to exercise it.

36. Again at another place the noble Lord summed up in these words:

The conclusion, then at which I arrive is, that the Appit. has not established his case. The words "it shall be lawful" are permissive & enabling only. It devolved upon him to shew that the Legislature intended the exercise of the power, thus conferred, to be a duty, in the performance of which the bishop was not intended to have any discretion, & he has, in my opinion, failed to shew it.

37. Lord Selborne, another of the learned Judges, made similar observations:

I agree with my noble & learned friends who have preceded me, that the meaning of such words is the same, whether there is or is not a duty or obligation to use the power which they confer. They are potential, & never (in themselves) significant of any obligation.

38. These significant passages clearly show that it is always for the Ct. to find out whether in the circumstances of a particular case the failure to exercise the power would amount to a dereliction of duty; in other words, it would depend upon the facts & incidents of the case under consideration to couple the power with a duty upon the Ct. to issue the writ prayed for. If the Ct. is not satisfied on an examination of the facts & incidents of the case & the nature, object conditions thereof that it calls for interference by a writ of mandamus or any writ of the like nature, the Ct. may refuse to exercise that power. It cannot be laid

down as a hard & fast rule that in each case where the party claims the redress of any legal right, the Ct. must as a matter of duty issue a writ in his favour if he seeks to apply for it. It is important to bear in mind that on the facts of the case in "Julius v. Bishop of Oxford" their Lordships refused to issue the mandamus prayed for.

39. Another decision on which reliance has been placed on behalf of the petitioner is the decision of the Judicial Committee in "Alcock, Ash-down & Co. v. Chief Revenue Authority, Bombay", (50 I A 227). In that case their Lordships relying upon the above decision in " (1880) 5 AC 214 ", held that it was the duty of the Chief Revenue-authority u/s 51 of the Indian income tax Act, 1918, to state a case & refer it to the H. C. when in the course of an assessment a serious question of law arises, & the H. C. has power u/s. 45, Specific Relief Act, 1377, to make an order requiring the Chief Revenue-authority to perform that duty. It was contended before the Privy Council that though u/s. 51 of the then Indian income tax Act, the Chief Revenue-authority "may, if he thinks fit, draw up a statement of the case & refer it to the H. C., he is bound to do so, even on the application of the person to be assessed if he is satisfied that the application is frivolous or that the reference is unnecessary, & that the authority has in the present case shown that he is satisfied that the application was frivolous & the reference was unnecessary". Their Lordships repelled the contention thus:

If the assessee applies for a case the Authority must state it, unless he can say that it is frivolous or unnecessary. He is not to wait for the Ct. to order him to do it; it will be a misfeasance & a breach of the statutory duty if he does not do it. Put that case aside. The rule here is supported upon the earlier part of the section. No doubt that part does not say that he shall state a case, it only says that he may. And as the learned counsel for the respondent rightly urged, "may" does not mean "shall". Neither are the words "it shall be lawful" those of compulsion. Only the capacity or power is given to the Authority. But when a capacity or power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it.

40. And then their Lordships proceeded to quote the classical observations of Lord Cairns to which I have already made a reference. Here again, it is to be observed that what their Lordships point out is that there may be circumstances which couple with the power a duty to exercise it, & the facts of that case indicated that serious questions of law did arise & therefore a reference was necessitated.

41. Incidentally Mr. P.R. Das also drew our attention to the limitation provided in S. 45, Specific Relief Act. He contended that these limitations are not to be found in Art. 226 of the Constitution, & therefore the exercise of the power by the Ct. was unhampered & untrammelled by any of those limitations. The existence or nonexistence of the limitation as mentioned in S. 45, Specific Relief Act, is immaterial. The exercise of the power to issue writs will have to be broad-based on well-established principles & the mere fact that the limitations provided in S.

45, Specific Relief Act, have not been incorporated in Art. 226 of the Constitution will not affect the legal position as to the circumstances within which a duty is cast upon the Ct. to exercise those powers. In fact, Mr. P. R. Das, as shown above, has himself relied very strongly upon English precedents which had nothing to do with S. 45, Specific Relief Act. I may as well state that the decision in "(1880) 5 AC 214 (supra)" appears to have been expressly consd. by at least one of the Judges who decided the F. B. case of this Ct. in "Bagaram Tulupule's case (supra)", namely, Das, J. The learned Judge refd. to a recent decision of the English Cts. in *King v. Marshland Smeeth*", 1920-1 KB 155, & he quoted in extenso from the judgment of McCardie, J. where his Lordship pointed out that where a statute has conferred a power or discretion only, as distinct from a duty, then the prerogative writ of mandamus will not be issued by the Ct. as a matter of course.

42. For these reasons it will be necessary to find out whether in the circumstances of the present case the petnr. has been able to establish that (1) he has no alternative remedy in order to obtain redress & effectuate his legal right, & even if he has, (2) whether that alternative remedy is equally convenient, beneficial & effectual for the enforcement of that right.

43. On the first point Mr. Das urges that it is very doubtful whether the petnr. would be entitled to sue the State of Bihar for recovery of possession of his property, & even if he did institute such a suit, the protracted character of the litigation might be such as to give him no relief at all, because by that time the petnr. might complete the 21 years of his age. He submits, therefore, that the remedy by way of a suit if at all was neither convenient, nor beneficial nor effectual. He relies upon a passage in Halsbury's Laws of England Vol. IX, p. 744 paras. 269 & 270, where it has been observed that in case the alternative remedy is not equally convenient, beneficial & effective for the enforcement of a legal right, the issue of a writ is the only appropriate remedy, & its performance is to supply the lacuna in the administration of justice & to give speedy & prompt relief to the parties aggrieved by the conduct of public servants & officers. He also contends that the State of Bihar being in possession of the petnr.'s estate through its delegates & agents, the other opposite parties, namely the Board of Revenue & the subordinate officers, the petnr. May not be able to maintain a suit for recovery of possession against them. Reliance has been placed by him upon a decision in "*Secretary of State v. Shreegobinda*", (59 Cal 1289). Rankin C. J. who delivered the judgment in that case opined that the jurisdiction "exercised by the Ct. of Wards was in exercise of powers, "essentially sovereign" to take over the estates of persons unable to manage their own estates in order that they may be properly managed & the Govt. revenue may be rendered safe. The learned Counsel also refers to S. 69 A, Ct. of Wards Act, as amended by the Act of 1940. This section enacts:

No suit shall be instituted against the Crown in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or

omission to perform any duty devolving on the Provincial Govt. or the Ct., or any of the officers subordinate to it & acting under this Act. or in respect of the exercise of, or the failure to exercise, any power conferred by his Act on the Provincial Govt. or the Ct., or any officer subordinate to it & acting under this Act, except for the recovery of possession of property in charge of the Ct. on the ground that such property is not subject to a trust, or for making the Ct. chargeable with or accountable for the loss or misapplication of any property in its charge or the income thereof where the loss or misapplication has been occasioned by or through the wilful neglect or default of the Ct. or of any officer subordinate to the Ct.

44. The exceptions to the section quoted above are very important. In my opinion, S. 69 A does not preclude the right of a suit altogether nor does it appear to me that the said decision in "59 Cal. 1289 (supra)" is an authority for holding that there is a complete bar to the institution of suits against the opposite party for recovery of possession of the property of the petnr. taken over by the Ct. of Wards when the circumstances under which the Ct. of Wards took charge of the estate have ceased to exist & the Ct. under the statute could no longer function as a custodian of trustee in respect of such property within the meaning of the Act. S. 69 A itself provides that a suit for possession of such property will lie & makes an exception in regard to suits for recovery of possession of property in charge of the Ct. on the ground that such property is no longer subject to such a trust. Besides S. 69 A must be read subject to other provisions of the Act wherein the powers of the Ct. to hold charge of the estate of a ward & the circumstances under which it can continue to hold charge have been defined, for instance S. 8 of the Act says that whenever the circumstances of any ward become such that the Ct. could not take charge of him or of his property, if he were not under its charge already, the Ct. shall be bound to release from its charge such person & his property. Therefore subject to just exceptions mentioned in the Act, where the conditions in which the Ct. could take charge of the person & property of a ward, as provided by Ss. 6 & 7 of the Act have ceased to exist, the Ct. shall be bound to release from its charge such persons & properties. The Ct. of Wards would in that case become "functus officio" with respect to such persons & property & a suit for recovery of possession under those conditions would lie just in the same manner as against any other trespasser. So long as those circumstances subsist, the Ct. of Wards is to continue in possession of the person & property of the ward. The property, LIS it were, is subject to a trust in the hand³ of one Ct. for the benefit of the ward. There is, therefore, not much substance in the argument that the petnr. has no alternative remedy.

45. It is, however, doubtful whether such a remedy would equally be a convenient, beneficial & effective remedy. There is no gainsaying the fact that the decision of a regular title suit instituted in the ordinary civil Cts. is bound to be a prolonged affair, & the petnr. may even before the conclusion of the litigation complete the age of 21 years thereby necessitating the Ct. of Wards to

deliver possession of the properties to him irrespective of the result of that litigation. Such a litigation might at all events prove intractable. It is true that apart from this, the petnr. has not been able to point to any other factor so as to lead this Ct. to hold that the circumstances of this case are so compelling as to cast a duty upon the Ct. to issue a writ of mandamus the properties are in the hands of the Ct. of Wards & the state of Bihar & nothing has been brought to our notice to indicate that the estate is being mismanaged or squandered so as to cause irreparable & serious injury to the petnr. if the management of his property continues to be in the hands of the opposite party any longer. The properties have undoubtedly vested in the petnr. on the death of his father & he is now the sole owner of the Raj according to the rule of primogeniture which obtains there; & the fact that the properties are not in his possession must naturally be inconvenient to him. It does not, however necessarily follow that the management, if it continues to be in the hands of the Ct. of Wards, would not be beneficial to his interest. At any rate, there is no complaint on that score. On these grounds I find it difficult to agree with the contention of Mr. F. R. Das that it is an appropriate case where the prerogative writ of mandamus should be issued by the Ct. specially when I am not satisfied that the petnr. has a good case on merits.

46. This leads me to an examination of the merits of the appln. namely, whether the possession of the Ct. of Wards after the Death of the petnr.'s father when the estate had vested in the petnr., is illegal & in violation of the petnr.'s right to hold the property. The discussion of this problem turns upon the answer to the question whether the petnr. has attained the age of majority. Mr. P. R. Das for the petnr. relies upon S. 3, Majority Act, 1875 (Act IX of 1875). S. 3 of the said Act provides that subject to the exceptions mentioned in the section, every other person shall be deemed to have attained his majority when he shall have completed his age of eighteen years & not before. The exceptions specified refer to: (i) a minor of whose person or property, or both, a guardian has been appointed or declared by any Ct. of Justice (other than a guardian-ad-litem under Civil P. C.) & (ii) a minor of whose property the superintendence has been or shall be assumed by any Ct. of Wards before the minor has attained the age of 18 years. In these two classes of cases only, according to the section, the minor shall be deemed to have attained majority when he completes his age of 21 years & not before. For the petnr. it is argued that he does not come under any of these exceptions, & for the opposite party it is contended that he does come within the limitation in as much as the petnr. was a person during whose minority the superintendence of his property was assumed by the Ct. of Wards.

That being so, he could not attain the age of majority before he completes his age of 21 years. This necessitates an examination of S. 7, Ct. of Wards Act, as it stood prior to the amendment of 1940. But before I do that I may here dispose of a short point which has been raised by Mr. Das.

47. He contends that the above exceptions in S. 3, Majority Act, being

discriminatory in character in regard to certain class of minors, must be held to be inconsistent with Art. 14 of the Constitution & therefore void. In this context he refers to a passage from Willis Constitutional Law cited with approval by Mukherjee, J. of the S. C. in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . It is well-established however, as that decision itself recognises, that the presumption is in favour of the constitutionality of a legislation & the burden is upon him who attacks it to show that there has been a transgression of constitutional principles. Cts. of law should "prima facie" lean in favour of upholding the legislation on any reasonable and valid assumption & it is for the party impugning the enactment to make out an unanswerable case for showing that the selection or discrimination under the enactment was arbitrary & untenable. As was laid down by the S. C. at America in "Radice v. New York", (264 US 294) :

The Legislature is free to recognise degrees of harm & it may confine its restrictions to those cases where the need is deemed to be the clearest." This quotation has been relied upon by Mukherjee, J. himself in the above decision & is, in my opinion, sufficient justification for rejecting the aforesaid contention of Mr. P. R. Das.

48. I shall now turn to S. 7, Ct. of Wards Act. For the petnr. it is contended that two essentials were necessary in order that the Ct. of Wards could assume charge of the minor's property when taking Charge of the estate of the disqualified proprietor. The first is that the minor must have had "an immediate or reversionary interest in the property of such proprietor or joint proprietor" at the time when the Raj was taken charge of by the Ct. of Wards. The other essential is that the said minor must have had some property of his own at the time to enable the Ct. of Wards to take charge of both the person & property of the minor. For the petnr. it is contended that the words "person & property of any minor member of the family" should be read conjunctively & not distributively & if the minor had no property of his own, in that case the Ct. of Wards could not take charge of the person of the minor.

It must be remembered that the section is an enabling section empowering the Ct. of Wards to take charge of both the person & property of any minor member of the family of the disqualified proprietor. But it does not compel the Ct. to take charge of both the person & property of such minor. It creates a power & not a disability. This position becomes clear from a perusal of the subsequent provisions of the Act. In fact, the word "and" occurs in the section with reference to the person & property of a sole proprietor or joint proprietor of any estate who is "disqualified" within the meaning of the Act. But a perusal of S. 9 shows that it is in the discretion of the Ct. to take charge either of the person or property of the disqualified proprietor or both. Mr. P. R. Das & Sir Sultan Ahmed who followed him on behalf of the petnr. have both conceded that the word "and" with reference to the disqualified proprietor in the section might mean "or" but they contend that with reference to the minor it must be understood in its ordinary

conjunctive sense & not in a disjunctive sense. They contend that the expression should receive its literal & grammatical meaning & not one which may be forced & even lead to anomalous consequences. In this connection reliance has been placed on a large number of cases both English & Indian including the F. B. decision in Sukhnandan Vs. Suraj Bali and Others, . The principle underlying those decisions cannot be doubted, but the true meaning of an expression is to be gathered from the context in each case. I have already given my reasons for holding that, in granting power to the Ct. to assume jurisdiction over person & property of the minor, the two objects have been conjoined without creating any obligation upon the Ct. to take charge of both or not at all. Therefore where the State takes charge of either the person or the property of the minor, who is a member of the family of the disqualified proprietor, the minor becomes a ward of the Ct. within the meaning of the Act.

49. Mr. P. R. Das may be, perhaps, right in contending that the Ct. of Wards must be in charge of the property of the minor before the exception in S. 3, Majority Act, can apply to the case of such a minor & that any other meaning cannot be attached to the definition of the term "minor" under the Ct. of Wards Act, inasmuch as such a course would lead to inconsistency between the two legislations. The "question, however, does not directly arise in the present case because, as" I shall show hereafter, the Ct. of Wards has been shown, on the materials as they are, to have assumed charge both of the person & property of the petnr. as a minor member of the joint family of the "disqualified proprietor" when it took over charge of the latter's estate.

50. Another suggestion by Mr. Das is that the term "property" as used with reference to the minor in S. 7 of the Act, must refer to immoveable property only. Mr. Das, however, had to concede that the word "property" used with reference to the "proprietor" or "joint-proprietor" in the same section means & includes both moveable & immoveable property. The expression, therefore could not have been used in any different sense in the same section & there is nothing in the context to support this suggestion of Mr. Das.

51. In the present case the opposite party have in para. 7 of the counter-affidavit mentioned three items of property which happened to be the property of the minor. An affidavit in reply has been filed on behalf of the petnr. denying the allegations aforesaid & certain letters of the Ct. of Wards, the Maharani Saheba, the mother of the petnr. & that of the late Maharaja Bahadur form annexures to this affidavit in reply. The genuineness of these annexures has not been questioned before us. On a perusal of annexures X & X-2 It is quite obvious that the first item of property, namely, ornaments, jewelleries etc. presented to the petnr. on the occasion of his "mundan" ceremony locked in the Hathwa Raj Treasury were held to be estate property, & the petnr. also does not claim that they were his property at the time. In regard to the ornaments, jewelleries & gold coins said to belong to the petnr. & his younger brother kept in the locker of the Imperial Bank of India Patna, the argument is that these properties were

actually not in possession of the Ct. of Wards. It also appears from the award dated 11-8-1946, vide annexure X-3 to the affidavit in reply, that the board agreed that certain jewellerys belonging to the minors should remain in charge of the petnr's mother, the late Maharani. So far as these properties are concerned, it is argued that the Ct. of Wards never took charge of them, because admittedly some of them were placed in charge of the late Maharani Saheba. & the others were admittedly in charge of the Imperial Bank of India, Patna, although they might have been held to belong to the petnr. & his brother. In this connection the petnr's learned counsel has reld. upon a decision of this Ct. in *Lachmi Narain v. Mahomed Abraham Hussain Khan*", (4 Pat 172), where Ross, J. observed in course of his judgment that the order vesting the management of certain properties

does not take effect until possession of the property is actually taken; &, until such possession is taken, the Ct. of Wards is not in charge of the property & the ward may be free to deal with it as he likes; but this is a matter on which I express no opinion.

52. Obviously, therefore, Ross, J. did not purport to give any express opinion on the point, & the observation in the earlier part of the sentence appears to be a mere obiter. The case is however, an authority for another important proposition, namely, that where the Ct. declares that it has determined to take the property of the disqualified proprietor under its charge, it empowers the Ct. to take charge of all such property including the "after-acquired property". His Lordship observes :

the disqualification attaches to the person; & after a declaration u/s. 6 (e) of the Act, the proprietor is to be held disqualified to manage his own property. Any property, therefore, that comes to him by inheritance or otherwise, after he has once been declared a disqualified proprietor & the Ct of Wards has taken over his property u/s. 35 of the Act, must be property which he is disqualified from managing & the management whereof must automatically vest in the Ct. of Wards.

53. In my opinion, once the management of the property of the disqualified proprietor or the minor members of his family has vested in the Ct. of Wards, it is the Ct. of Wards which is legally in charge of such property although the property may be for the time being in actual physical possession of any other person. Here the fact that under the terms of the award the property was in possession of the mother or that of the Imperial Bank of India, Patna, could not make any difference so far as the legal custody is concerned, & it is the Ct. of Wards which would be responsible for the legal custody of those properties so that in case of any misfeasance of the properties, the Ct. of Wards could be entitled to take appropriate steps. In fact, the award itself says that although the Maharani Saheba was to be in charge, she was directed to keep it in a separate box with another box containing her own jewellerys in the same locker.

54. In regard to the third item of property, namely, the Defence Saving Certificates purchased for & in the name of the petnr. & his brother, these purchases appear to have been made in November, 1940, & in April, 1941. The contention, in the first place, is that apparently these were after the vesting order, & therefore, could not be taken charge of by the Ct. of Wards. To that the answer is contained in the decision in 4 Pat 172 (supra)", efd. to above. It is next contended that in any event after the amending Act of 1940 had come into operation, the Ct. of Wards could not continue in possession of the minors' properties & should have handed over possession of the same to the natural guardian of the petnr. The contention is based on S. 7 (e) of the Amending Act which clearly shows that if the estate of a proprietor is taken charge of by the Ct. of Wards on the appln. of the proprietor himself seeking to be declared a disqualified, proprietor, in that case the provision in regard to the taking charge of the person or property of a minor member of the family was not applicable. The original provision was S. 6 (e) of the old Act. This was replaced by S. 6 (d) of the amending Act, & it is quite true that S. 6 (d) is not mentioned in S. 7 (e) of the amending Act under which the Ct. had jurisdiction to take charge of the property & person of the minor member of the family of the proprietor whose estate is taken over by the Ct. of Wards. In my opinion, however, the amending Act does not affect the position in regard to such estates as had been already taken charge of by the Ct. of Wards under the law as it then stood. The old Act has not been completely repealed. All that has happened is that some of its provisions have been amended by Act IV (4) of 1940 & the relevant sections partially altered. The amendment, therefore, will not affect transactions which had already taken place under the old Act & the charge of the person or property of the minor having once vested in the Ct. of Wards, it could not be divested except under the provisions of the Act. For the petnr. reliance has been placed on S. 24, General Clauses Act. But S. 24, in my opinion, has no application to the case. In fact, u/s. 2, Ct. of Wards Act, which was not affected by the amendment, it has been expressly provided that all persons & properties which at the commencement of this Act were under the charge of the Ct of Wards as constituted by Bengal Act IV (4) of 1870, shall be deemed to be under the charge of the Ct. of Wards as constituted by the said Act. If the Ct of Wards could be deemed to continue in charge of person & properties of which it had taken charge under Act IV (4) of 1870 even after the amendment of 1940 there is no reason any it should not continue in charge of person & properties of which it took charge under the existing Act prior to the amendment of 1940. The contention, therefore, in my opinion, is without any substance.

55. The net result of these discussions is that the petnr. had properties of which the Ct. of Wards could assume charge at the time when it issued its assumption order on 11-5-1940, & that being so, the Ct. of Wards would be deemed to have assumed charge of the person & property of the petnr. within the meaning of S. 7, Ct. of Wards Act.

56. The question then is whether the petnr. had "an immediate or reversionary

interest" in the property of the Maharaja of Hathwa who was the disqualified proprietor. Mr. P. R. Das urges that he had no "immediate interest" in the property because the Hathwa Raj was the sole & exclusive property of the disqualified proprietor, the father of the petnr. He also says that the petnr. could neither have any reversionary interest because the term "reversioner" has been used in a known legal significance under the Hindu law, & it should be deemed to have been used by the Legislature in that very sense (vide "L. P. E. Pugh v. Ashutosh Sen", 56 IA 93 at p. 101). This proposition is well known but it must be remembered that the Ct. of Wards Act is not meant to apply only to the Hindus but to other communities as well. Therefore the term "reversionary interest" as used in the Act must have a wider connotation: & then again the term "reversionary interest" has been used at times in authoritative judicial pronouncements in connection with succession to an impartible estate. Nor can it be asserted that the petnr. had no immediate interest in the Hathwa Raj during the lifetime of his father. I may in this context refer to a decision on the Judicial Committee in "Comr. of income tax v. Krishna Kishore", (68 IA 155), where their Lordships observed :

Since the decision of the Board in "Baijnath Prasad v. Tej Bali Singh", (43 I A 195), it has been settled law that property though impartible, may be the ancestral property of a joint family, & that in such cases the successor falls to be designated according to the ordinary rule of the Mitakshara." & then they quoted with approval the concluding words of the judgment delivered on behalf of the Board by Lord Dunedin in "Baijnath's case", (48 I A 195). I will refer just to a short excerpt to illustrate my meaning:

The birth right of the senior member to take by survivorship still remains. Nor is this right a mere spes successions similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which is capable of being renounced & surrendered.

57. Therefore, the petnr. had undoubtedly some kind of immediate interest in the property though he may not have been an actual co-owner much less a joint-proprietor of the estate along with his father, the late Maharaja Bahadur.

58. The learned Advocate General contended, on the contrary, that the petnr. was a joint proprietor of the estate, & as such the Ct. of Wards had assumed charge of the estate of the joint proprietor. This contention was evidently encouraged by the observations of the Judicial Committee in the case refd. to above where their Lordships held that the property of an impartible estate in the hands of the then owner of the property was a joint family property. But their Lordships have made it absolutely clear that in such cases, the members of the family cannot be held to be the owners of the property. The income of an impartible estate is not the income of the undivided family, but the income of the present holder. The other members of the family could not restrain the rights of alienation of the present holder; nor could they claim any Joint possession. They could not even necessarily claim a right of maintenance. Their Lordships

observed:

General considerations of theory have their proper place, but impartibility & primogeniture when introduced into the Mitakshara involve competition & compromise between different lines of theory; if the doctrine that "there is no coparcenary" may be pushed too far in one direction, the doctrine that the Junior members are in a sense co-owners may be pushed too far in another; the special incidents of joint family property which is impartible being overlaid in either case by rigid theory.

59. Therefore, it is not possible to accept the contention of the learned Advocate General that he petnr. was in the position of a joint proprietor of the estate during the lifetime of his father.

The other factual difficulty in adopting this argument, as pointed out by Mr. P. R. Das, is that at the time of assuming charge of the estate of the late Maharaja Bahadur, the Ct. of Wards never purported to take charge of the estate of a joint proprietor but of the estate of disqualified proprietor, namely, the then appct. Maharaja Bahadur Guru Mahadevashram Prasad Sahi, & even in their counter-affidavit, they did not claim that they had taken charge of the estate as belonging to joint proprietors. On the other hand, they conceded that the Hathwa Raj was an ancient joint family impartible estate which devolves by survivorship.

60. The learned Advocate General has presented another ingenious & interesting argument. He contends that the word "property" as used in S. 7, Ct. of Wards Act, means interest in property & the term "property" with reference to the minor means & qualifies the interest which the minor has in the property of the disqualified proprietor. Viewed in this light, it is not necessary that the minor needs must have separate property of his own of which the Ct. of Wards must take charge, because in assuming charge of the property of the disqualified proprietor the Ct. must be held to be taking charge of the "interest" or "property" of the minor also in that property. There is apparently much substance in this contention but in view of the findings at which I have arrived, I will refrain from coming to any final decision on the point.

61. It thus emerges that the petnr. had "an immediate or reversionary interest" in the pro; perty of the disqualified proprietor, & that he had also properties of his own, he being a member of the joint family of the late Maharaja Bahadur of Hathwa, when the Ct. of Wards took charge of the Hathwa Raj as also of the person & property of the petnr. That being so, the petnr. is a person who comes under the limitation provided in S. 3, Majority Act, viz. that he was a minor of whose property superintendence or charge had been assumed by the Ct. of Wards. In such a case he shall not be deemed to have attained his majority until he completes his age of 21 years as submitted on behalf of the opposite party. It cannot, therefore, be successfully argued that the opposite party are illegally in possession of the estate of the petnr.

62. I cannot wind up my discussion of the topic without reference to another

plausible though untenable contention of Sir Sultan Ahmad. He contended that the Ct. of Wards took charge of the property of the petnr. only because the petnr. happened to be a minor member of the family of the disqualified proprietor. This latter condition, according to him, was the "sine-qua-non" of the Ct.'s power to take & retain charge of the property of the petnr.; that condition or circumstance having ceased to exist on the death of the petnr.'s father, the Ct. had to deliver charge of the property to the petnr. & release the same. Under S. 8 of the Act, he says, the Ct. could not take charge of the property at present on the basis that it had, & therefore the Ct. had no power now to retain hold over the property. In my opinion, the underlying fallacy to this argument is that the existence of the said condition was necessary only to enable the Ct. to take charge of the property of the "minor" within the meaning of S. 8 of the Act. Once the Ct. has validly assumed charge of the minor's person & property, the minor becomes a ward of the Ct., & until he attains the requisite age under the Ct. of Wards Act to cease to be a minor, he continues to be such a ward. The contention therefore, cannot be upheld.

63. For the reasons stated above, this appln. fails & must be dismissed with costs as directed by my learned brother.