

(1960) 02 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.C.C. No. 22 of 1954

Khushal Singh Daulat Singh

APPELLANT

Vs

State of Madhya Bharat and another

RESPONDENT

Date of Decision : 05-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Bharat Abolition of Jagirs Act, 1951 — Section 9

Citation : (1960) J LJ 1160 : (1960) MPLJ 1063

Hon'ble Judges : K.L. Pandey, J; H.R. Krishnan, J

Bench : Division Bench

Advocate : S.D. Sanghi, for the Appellant; K.A. Chitale and S.L. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is a petition under Article 226 (and 227 in the alternative) of the Constitution by a Jagirdar praying that this Court should nullify the order of the Government of Madhya Bharat dated 16-4-1954 directing that Birakhedi, one of the three villages in the original Jagir, which had been in Shikmi Jagir with the widowed aunt of the Petitioner, should be restored to Brijkishore (Opposite party No. 2) her son by adoption, sanctioned in 1938 by the Durbar of Gwalior. This order was on an application for review by Brijkishore, of the earlier ex parte order made on 20-10-1952 that this village should be restored to the Petitioner, subject to his paying Brijkishore a monthly maintenance of Rs. 100; this had been made on an interpretation of an order by the Durbar in 1946, apropos a prayer by Brijkishore for mutation of his name in regard to the Shikmi Jagir during the life-time of his adoptive mother.

The Petitioner's position is that in the event of this Court's finding, the latest order, that is the one of 1954, was made by Government in a* judicial or quasi-judicial capacity, it should be set aside in exercise of supervisory powers under

Article 227, because Government was legally incompetent to review its earlier order of 1952 and also, on the ground that after the coming into force of the Constitution, the post-constitutional Government of the State of Madhya Bharat had no power to interfere in a matter concluded by the order of the Ruler of Gwalior in 1946. Under Article 226, a writ of the nature of certiorari should be issued, as there was no jurisdiction to pass the order of 1954. If it is found that the Government was acting in an administrative or executive capacity, then also, a direction of the nature of mandamus should be issued that it should not be enforced. In either event, the order of 1952 would be revived for what it is worth to the parties in the new context.

It is to be noted that in 1952, the Abolition of Jagirs was imminent though the actual date of vesting in Government was shortly after the Government's order of 20-10-1952. By 1954, however, the Jagirs and the Shikmi Jagirs as such, had been abolished but each of these units was represented by a sum payable as compensation by Government over a period of years, and in certain cases, some lands granted to the Jagirdar for cultivation. We are told at the Bar that the compensation payable by Government in respect of this village Birakhedi is something between 20 and 30 thousands, out of which (in view of the present proceedings) the due instalments have not been paid to either claimant. The practical effect of the order of 1954 is that the entirety of the compensation would go to Brijkishore, the adoptive son of Hirabai, the original Shikmi Jagirdar. If that order is vacated for one reason or another, the order dated 24th November 1952, would be revived under which the Petitioner would get the entirety of the compensation subject to the charge of maintenance. At the first sight, the practical difference to the Petitioner would appear to be little indeed; but we are told by the Petitioner's counsel that in the event of his success here, he would move the Jagir Commissioner for the setting aside of the monthly allotment of Rs. 100 out of the compensation, or for a scaling down in the manner provided in Section 9 of the Madhya Bharat Abolition of Jagirs Act, 1951.

On the purely legal grounds, the Petitioner's case is that the Government was presumably acting as a quasi-judicial tribunal; in view of the earlier order of 1952 made by itself, it could not pass the subsequent order on a prayer for review, for the very simple reason that there was no statutory provision for review of such orders. Further, it was urged that though ostensibly acting on an application for a review of its own order of 1952, the Government was really setting aside a Durbar order made in 1946 which it could not do in any event. Thirdly, it was urged that the Shikmi Jagir given to Hirdbai being a life grant only, it should automatically have on her death, reverted to the parent Jagirdar, that is, the Petitioner. The Court of Wards had taken it over unnecessarily, but when Government found that there was no reason for its exercising control, it should (as it did in 1952) have ordered restoration to the Petitioner. Even if it was an administrative order, the case was one not at all calling for a reconsideration by Government. On merits, the Petitioner has contended that this Shikmi Jagir was a life grant to the widow of his junior uncle, and the sanction to adopt accorded

by the Durbar in 1935 did not imply a conversion of a life grant to a heritable Shikmi Jagir.

As against this, the Government has concurred with the position taken by the opposite party No. 2 (the adoptive son). A preliminary point was that the question of jurisdiction of Government to reopen the matter already concluded by the order of 1952, was not even canvassed before the Revenue Minister and the Secretary to the Government, who heard the review proceedings. Therefore, that cannot be raised in the present proceedings. The parties have sworn affidavits and counter-affidavits, as we note several years after the proceedings before the Government; but the actual arguments are on purely legal grounds, the Petitioner urging that it was an absolute want of basic jurisdiction, and whether or not the point was canvassed would be immaterial. As against it, the opposite parties urge that Government was acting in exercise of the powers given by Article 7 (3) of the Covenant on the constitution of the United State of Madhya Bharat, and, under Rule 95 of the Qawayad Jagirdaran of the Gwalior State (hereinafter called "Qawayad") which is still in force and operative. Under both the provisions, and in fact, in every matter concerning Jagirdari, Government was exercising administrative power or to quote the Supreme Court in *Umrao Singh v. Bhagwati Singh* AIR 19C6 S.C. 15, "A power of recognising an heir to a Jagirdari which is political in character and has an incidence of sovereignty." Thus, there was no question of statutory sanction for reopening the subject or reviewing an earlier order. Again, even if it is construed as a quasi-judicial power, the very fact that the order of 1952 was ex parte and the person most concerned refused to acquiesce and wanted to be heard, justified Government in reopening the subject. Once it did, it had to consider the real meaning and effect of the earlier administrative order made by the Durbar in 1946 with due regard to what the adoptive Son would have urged in 1952, had he had notice.

In regard to the history of the Jagir and the Shikmi Jagir, the parties take substantially different positions in regard to the happenings at the various stages; the Petitioner, that Hirabai was a life-grantee all the time; the opposite parties' position is that she was a Jagirdar in her own rights, described as Shikmi Jagirdar, because she was given one out of the three villages in the original Jagir, which incidentally was the very village which her husband, the younger brother of the Petitioner's father, had been given in his time. Till there was an adoption, it was necessarily a life tenure under the general law, and the mention of Hirabai in 1914 as a "binhayati" Shikmi Jagirdar was a factual description true at that time and was not a legal restriction. When in 1938 the lady was permitted to adopt, the position changed. As for the order in 1946, it was made apropos a prayer for mutation of the adoptive son's name in place of the mother's during her life-time, which could not take place at any event in view of the provisions of the Qawayad. Thus, the Durbar's cryptic order "Gujarish approved" would apply only to the operative part of the "gujarish" and not to the statements made by the office in regard to the history and other matters. While, in 1952, the

Government passed an ex parte order reducing the adoptive son to a maintenance-holder with Rs. 100 a month, the order in 1954 after hearing the parties, restoring to him the original proper status of a Shikmi Jagirdar. Whether or not Government's reasoning commends itself to this Court, it was an order passed in exercise of its administrative powers having due regard to the circumstances in fact, the changed circumstances, and to the purpose for which the Jagirs had been granted and the rules in the Jagir manual.

The parties have gone at full length into the history of this Shikmi Jagir. Three villages in what used to be the Ujjain District of the erstwhile Riyasat of Gwalior, namely Kunghara, Jesakhedi and Birakhedi, were comprised in an old Jagir popularly called the "Kunghara Jagir" held by a family of "Kayasthas" a point of significance in regard to the manner of adoption permitted by the Jagirdari rules and actually sanctioned by the Durbar. It was a "defective" grant of the kind described in Chapter 8 of the Jagirdari Rules of the Gwalior State, being one of a historical antiquity but without an express grant by the Gwalior Government Rule 41 (b). Originating from the time of Moghuls, it was recognised all the time by the Gwalior Rulers, who finally gave a formal Istamurari Patta in 1882. At that time, there were two brothers in the family, the elder, Daulatsingh, father of the present Petitioner and the younger, Onkarlal, the husband of Hirabai and the adoptive father of Brijkishore. These Jagirs are impartible and descend by primogeniture, but the Durbar could make arrangement for junior branches either by maintenance grants burdened on the Jagir or some other arrangement like a Shikmi Jagir. In the present instance, Onkarlal was given village Birakhedi about Samvat 1945 (1888 A. D.), over which, ever since that year, Daulatsingh and Khushalsingh have not exercised any control. Onkarlal died without a son in 1894, his widow continued in enjoyment of the village which in 1905 was resumed but regranted as the zamindari with full rate revenue assessed, instead of the "tanka" or "Ubari" payable by a Jagirdar. Arrears began to accumulate and by 1912, they had accumulated to Re. 10,000 a very considerable sum in those days, in respect of this village alone.

Meanwhile, Daulatsingh also having died in 1910 the entire question of mutation as well as arrangement as between the two branches came up before the Durbar. At about this time, the Gwalior Government was considering a rationalization of the management of all Jagirdari grants. At the first instance, it compiled a history of the different Jagirs including an account of the state of affairs at that moment (page 410, Vol. II, Tarikh Jagirdaran). In addition, the prevailing practice with suitable alterations was formulated in a body of rules called Qawayad Jagirdaran which actually came out on 1st July 1913. Since all controversial happenings in the present case were after that date, it is not of much consequence whether or not anything happening in 1912, would also be governed by these rules. But as a fact, the rules do not purport to make any new departure but only clarify or declare the practice that was in vogue. Be that as it may, in 1912, all the three villages", (that is, Birakhedi included) were given as Jagir to the Petitioner Khushalsingh (son of the elder brother Daulatsingh) in what is technically

described in Chapter 8 of the Qawayad as "jadeed usool." Thus, Birakhedi, which had gone out of the Jagir as a zamindari village, was again brought back into it by the order of the Durbar, subject to the condition that the accumulated arrears of the revenue should be paid by the Jagirdar. At the same time, Onkarlal's widow Hirabai, who had been holding it as a zamindar, was also provided for by maintenance charged on the Jagir. This, however, was not accepted by that lady. On her petition, the Durbar ordered (in 1914) that village Birakhedi should go to this lady as a shikmi jagir, for her life, on condition that she (and not the jagirdar) should pay up the arrears of revenue and of course, continue giving the Government the "tanka" or "Ubari" in respect of this village. All this is non-controversial; but the Petitioner's argument is that, whatever might happen later on, this shikmi jagir was a life grant and could never become heritable. The contention of Brijkishore, however, is that as matters stood in 1914, and continued till the sanctioned adoption, the grant was a life grant, but with the adoption, it became heritable.

From 1914 onwards, the jagir consisted of the two residuary villages and Hirabai's shikmi jagir comprised of Birakhedi, as was the position in Onkarlal's time. As years passed, Hirabai was anxious to adopt her daughter's son Brijkishore who seems to have been born sometime after 1914. While Rule 8 in Chapter III of the Qawayad makes this impossible for Rajputs and Brahmins to adopt such a relation, it was permissible for Kayasthas. After some refusals by the subordinate authorities, the prayer for adoption of Brijkishore was sanctioned by the Durbar in 1938. This affected Khushalsingh's expectations of a smooth reversion after the lady's death; but his prayer that the sanction should be withdrawn was rejected by the Durbar. But the Minister wrote a letter to him that the time was not ripe for considering the reversion and that Khushalsingh might take the shikmi jagir on the death of the lady. We do not see how this letter can give any right to the parent jagirdar inconsistent with the consequence of the adoption which the Durbar had sanctioned. The adoption, it may be noted, was for the purpose of the jagir and not for any general purpose, for which sanction was quite unnecessary. Even then, some subordinates having created difficulties, the Durbar finally decided that this adoption should stand and the case may be treated as a "special" one.

Soon after, the lady and her adoptive son began to pray for mutation of the name of the latter for village Birakhedi even in the life-time of the former. In itself, it is not difficult, and other conditions being fulfilled the son can ask for mutation even in mother's life-time. At the same time, the rules do not provide for mutation of the shikmi jagirdar unless an occasion presents itself for the mutation of the original or parent jagirdari itself. After all, mutation is primarily for convenience and clarity of record, to enable the Government to know whom to deal with, and the subject to know how exactly he stands. Anyway the lower authorities concerned refused mutation on the ground that the mother being still alive, it was premature. Not satisfied with this, the mother petitioned the Durbar itself. In connection with this petition, a memorandum was prepared in the usual

manner (called "Gujarish" or prayer) and placed before the Ruler in 1946. This gujarish contains an account and we note, not a very correct account, of the past happenings, and concludes with a suggestion that mutation may be refused. This was a brief for the Ruler in a departmental proceeding, and when he wrote "Gujarish approved", it really means that he approved of the action suggested, that is, the operative part of the note, and cannot be understood to have dittoed whatever was in the body as the history or the reasoning. This order was sometime in the earlier part of 1946 when the lady was still alive.

Brijkishore avers that he did not know of this order, and the papers produced, which are otherwise very systematic by the standards of Indian States of that time, do not show that it was communicated to him or his mother. Normally, such an order would not have remained unnoticed for six years, but here, something basic took place immediately, making the order of little importance. So, as a fact, one has to believe Brijkishore in this regard.

Anyway, in September 1946, Hirabai died. Already for eight years past, there had been a latent dispute, Brijkishore aspiring to inherit the shikmi jagir in due course, on account of the sanctioned adoption, and Khushalsingh though frustrated in his attempt to obstruct the adoption, still hoping for a reversion of the shikmi jagir in view of the description in 1914 as "a life grant to the widow". Very properly, and in the manner provided in the Qawayad, the Court of Wards took over the village and began to manage it. The adoptive son could not be left high and dry and was given on the usual ad hoc basis, a monthly allowance of Rs. 100. It was neither a reduction of his status to a maintenance jagirdar from that of a shikmi jagirdar, nor an elevation of his status from that of a mere nobody with reference to the estate, to one really entitled to an interest in it. Meanwhile, the Court of Wards was probably keeping in deposit the surplus income for payment in time, to the owner to whom the village might be restored.

By 1951, the law for the abolition of jagirs was being prepared. In any view of the matter, the Court of Wards would cease to have physical control over the village after the due date and the Jagir Commissioner was anxious that this matter should be settled. So he reported to the Government, not u/s 17 of the Abolition of Jagirs Act (for which the time had not come), but as an administrative measure, apprising Government of the situation, the imminence of the abolition of the jagir, and made his own suggestion that on his understanding of the Durbar Order of 1946, the shikmi jagir was to be returned to the holder of the parent jagir. However, the adopted son being in receipt of a monthly allowance, must continue getting it. Therefore, Government without hearing either party ordered that the village of Birakhedi should revert to the holder of the parent jagir, on condition of his paying a monthly maintenance allowance of Rs. 100 to the adopted son of the shikmi jagirdar.

When the adopted son heard of it, he moved a petition in review. He was not prepared to acquiesce in the ex parte order, which (exactly as the order of 1912 did to his mother) reduced him to the status of a maintenance holder. He averred

that, had he been heard before the making of the order of 1952, he would have pointed out that the Durbar order of 1946 as understood by the Jagir Commissioner and Government was wrong. Had he known of that order at that time, he would have taken steps (Possibly, by memorializing the Ruler) and got the position clarified. Since he could not do it after 1946, and since he could not put his case before the Government in 1952, he prayed that the matter might be gone into again. This prayer was granted; both parties were heard by the Minister and the Revenue Secretary in 1954, and an order was made on 16-4-1954 that the shikmi jagir should go to the adoptive son, in effect, that he should get the entirety of compensation, plus the amount, if any, held in deposit by the Court of Wards out of the surplus income in its time. There was also a consequential order that any amount might have been withdrawn by the holder of the parent jagir in implementation of the order of 1952, should be recovered from him and made over to the adoptive son. We are told, however, that he had not withdrawn any money so that this part of the order is of no consequence.

This leads us to the consideration of the contentions of the respective parties, with special reference to the question of jurisdiction and legal competency, rather than on merits. If Government was exclusively competent to decide issues relating to the inheritance of jagirs, and if it could for proper reasons reconsider matters already decided by it, it is not for this Court to substitute its opinion on merits.

The first question therefore is, under what provision of law or rule having the effect of law, or in exercise of something outside it, like sovereign power, the Government was acting on each of these three occasions that is 1946, 1952 and in particular, in 1954. This is very simple, in view of Rule 95 in Chapter 22 of the Qawayad:

Questions regarding adoption, succession and maintenance shall be outside the jurisdiction of civil Courts and shall be decided departmentally

In this case, the question of adoption was decided in 1938 itself, which is of course common ground. In 1952, Government ostensibly decided the question of maintenance, but after reopening the matter in 1954, it decided the question of succession by the adopted son. In 1946, the Durbar decided by rejection, the prayer for mutation of the son's name during the life-time of the mother, and at a stage when under the Qawayad, the occasion for mutation had not arisen.

Stated thus, it is pimple enough but the parties have gone into the very difficult question of whether Government could act in 1952 or 1954 in exercise of the Rajpramukh's powers under Article 7 (3) of the Covenant, between the Rulers of Gwalior, Indore and the Malwa States, by which the United State of M. B. was constituted in 1948.

7 (3), Until other provision is made by an Act of the Legislature of the United State the right to resume Jagirs or to recognise the succession, according to law and custom, to the rights and titles of a Jagirdar shall vest exclusively in the Raj

Pramukh.

In the former Indian States, the grant and control on jagirs was part of the sovereign power of the Ruler, a word that has grown over it, a considerable amount of commentary and elaboration which is not unanimously accepted. As far as we are concerned here we can understand it, to mean the residuary, power of the Ruler or the State (which has got an independent international personality) and which is not already covered by any law or rule having the force of law, made by the appropriate authority. If there is already a set of such provisions, it might be even unnecessary to invoke the sovereign powers, and in any event, the exercise of the power could be in accordance with those provisions. But it is conceivable that cases arise not covered by any such general and unambiguous principles, or where departure was called for; in such event, the sovereign could act in exercise of the residuary power still left in him. Generally, it is accepted that the less we have of this sovereign power undefined and hanging loose, the more advanced or the more "in accordance with law" the Government is.

For the instant discussion, the point is that under Article 7 (3) of the Covenant, the individual Rulers including the Ruler of Gwalior, were surrendering to the Rajpramukh all their sovereign powers in regard to the resumption and the recognition to the succession to the jagirs. This was subject to the condition, that when the Legislature of the United State would make a law on this subject, the Rajpramukh himself would not exercise this sovereign power and the subject would be dealt with under the law. As things turned out immediately after the constitution of the United State of Madhya Bharat, a law was passed by the new State Legislature (Madhya Bharat Regulation of Government Act); u/s 4, "the rules already in force on this subject became the law for the purpose of Article 7 (3)". As far as the erstwhile Gwalior State was concerned, this is the Qawayad. In the arguments the opposite party contends that these powers persisted even after the birth of the Constitution, while the Petitioner urges that the coming into force of the Constitution "ended by a majestic sweep" all the vestiges of sovereign power, wherever they existed at that time. It is also further urged by the Petitioner that the Rajpramukh of the Part B State of Madhya Bharat, is juridically a person different from the Rajpramukh of the United State of Madhya Bharat; the former being a creation of the Constitution, while the latter was a delegate of the different Rulers who were parties to the Covenant. An attempt has been made by the parties to canvass support for their respective views, from the judgments?Bahadur singh v. Rajpramukh of Rajas-than AIR 1055 Raj 135 (S.B.) and Puroshattamsingh v. Narayansingh AIR 1956 Raj. 203 (D.B.), and also from the Supreme Court decision in Umrao Singh Ajit Singhji and Another Vs. Bhagwati Singh Balbir Singh, minor and Others, . But the course of events in the pre-constitution State of Rajasthan was in this regard different from that in the United State of Madhya Bharat; so, there is no analogy. In any event, it is unnecessary for us to go further into the question. In our opinion, after the enactment of Madhya Bharat Regulation of Government Act, 1948 the powers

given by Article 7 (3) to the Rajpramukh of that State ceased to be operative. Similarly, we would hold that any undefined sovereign power hanging loose, as it were, did actually disappear in the "majestic sweep" of the new Constitution. But the Petitioner's case is not strengthened by these findings, because, all the time, the Qawayad were in force and continued to be so after the coming into force of the Constitution as the "existing law". Under these (Rule 95) the Government of the Rajpramukh of the Part B State of Madhya Bharat is the only authority competent to deal departmentally with all such questions. Thus, the Government has authority and the exclusive authority, to decide the question, whether the adopted son of the shikmi jagirdar or the holder of the parent jagir should get that property.

19 Then follows the question, whether this power is executive or administrative, or whether it is the power of a quasi-judicial Tribunal to be exercised in the manner either specially provided in the relevant statute or law, properly so called, or in accordance with the general principles for the exercise of judicial power. The answer to this question will really conclude the issue as to the relevance of the first two of the grounds canvassed by the parties, namely, whether the Government could at all reopen the subject on the review petition, and, whether its competency to do so, can be challenged here, if it had not been, before the Government itself in the review proceedings.

The fact that the powers are being exercised under the rules (Qawayad) and not under an Act (or Qanoon by a Ruler) who has been observing systematically, the distinction between the two, may itself show the power to be executive. But here the case for its being executive power is on stronger ground. Rule 95 expressly states that it shall be dealt with "departmentally". Nor does it at all lay down any procedure; the only governing consideration being expediency with reference to the general purpose for which the jagirs were granted. That certainly does not mean that the Ruler, Rajpramukh, Governor, or their officers, could act just as they liked, their action is subject to the observation of the general purpose of making jagir grant. The Government could act from time to time, as it considers expedient, and in the interest of the State and of the grantees on the whole. If the department has arrived at its notice of expediency according to these, this Court cannot thrust its notions. If it concerned property in general, a conflicting claim of this nature, could go to the civil Courts, for a final decision by judicial process, of the rights of the parties. But the subject of jagirdari is distinguished by the original purpose of these grants which in fact is mentioned in the introduction to the Qawayad. The welfare of the families of the old amirs and raises was the ruling primary concern of the Government as the grants, which reserved to itself the power to decide in departmental proceedings as it appears, expedient to it. If there is any more doubt about the general nature of the Government's powers in this regard, it is cleared by what the Supreme Court has said in *Umrao Singh Ajit Singhji and Another Vs. Bhagwati Singh Balbir Singh, minor and Others*, . No doubt, in that case, the Supreme Court had before it the decision of the Maha Rao of Kota in regard to a jagir made before the

Constitution; but the principle that the right to grant and control the succession to jagir is an executive and political power, is of general application. In fact, Rule 95 of the Qawayad is a mere corollary from that principle.

The Petitioner argues that the earlier decision of Government whether of 1946, or 1952, was final; and in the absence of a statutory provision, it was incompetent to review it. This is really fallacious. The test of a decision by a judicial or quasi judicial proceeding is finality subject to statutory appeal, revision or review. On the other hand, the test of an administrative or executive decision is the notion of expediency arrived at bona fide, with due regard to the purpose of the subject-matter. To argue that Government cannot reconsider the earlier decision is to assume that it is a judicial power to be exercised finally.

In the present instance, even if it was a case of a quasi-judicial tribunal, the fact that in 1952 the party most concerned was not heard, might even in the absence of a statutory provision, have justified a reopening of the case, and hearing of both the parties. Once, the subject was reopened, the aggrieved party would certainly be entitled to show that the order of 1946 on which the order of 1952 was based, was itself either incorrect or had been misunderstood. He could further answer the delay in his questioning the order of 1946 by showing that he did not know of it and could not have questioned it earlier. That way, it would make no difference. But the real point here is that Government was exercising an administrative power departmentally in regard to a matter of political nature (using the word in its broad sense, as has been done by the Supreme Court).

Looking at the problem in this light, it is altogether inconsequential, whether or not the competency to review was challenged in those proceedings themselves. The legal position, however, is clear and is neatly expressed in Halsbury's Laws of England (Vol. 11, at paras. 220 and 221 of the Third Edition)?

Where the objection to the jurisdiction of a inferior Court appears on the face of the judgment or sentence in spite of the laches or acquiescence of the applicant.....

Where the objection to the jurisdiction is not apparent, and depends upon some fact in the knowledge of the applicant which he had an opportunity of bringing forward in the Court below, and he has thought proper, without excuse, to allow that Court to proceed to judgment without setting up the objection and without applying for a prohibition in the first instance, although the jurisdiction to grant prohibition is not taken away, yet, considering the conduct of the applicant, the importance of making an end of litigation, and that the order, though of right, is not of course the Court will decline to interpose, except perhaps upon an irresistible case and an excuse for the delay, such as disability, malpractice, or matter newly come to the knowledge of the applicant. But an application for prohibition is never too late so long as there is something left for it to operate upon

These principles are fully accepted by the law Courts of our country. Even on the

assumption that the power is quasi-judicial, here Government had inherent jurisdiction all right; it was only the earlier order of 1952 that made it, according to the Petitioner, a case where further consideration was impossible. That way, the failure to raise this issue before Government in 1954, which is obvious on the face of the Government's order, bars its re-agitation in Court. On the view that it is executive power, the question does not arise at all.

This takes us to the consideration of the competency or otherwise of the Government of Madhya Bharat to vary or to interpret the order made or understood to have been made by the Ruler in 1940. The entire purport of the order of 1954 is that the order of 1946 as understood by the Petitioner and the Jagir Commissioner, and by Government itself in 1952, is not correct. Shri Sanghi, appearing for the Petitioner has urged that the order of 1954 has not been made on the ground that the adopted son had not been heard on the earlier occasion, hut on the ground that the order of 1946 as understood then, is a wrong order. This is only a manner of saying. The adopted son comes up in review; in other words, because he could not present his case in 1952. This is perfectly true. Then he sets out what he would have urged had he been heard in that year, namely, that the order of 1946 as applied in the order of 1952 was wrong. To the obvious question, why he did not agitate or at least seek clarification on any earlier occasion, his answer is that he did not know at all that the Durbar has passed this order, which, as a fact, we believe. for reasons already noted. Thus, it boils down to this?Whether for one thing, the order of the Ruler in 1946 does really amount to an approval of everything contained in the office-note, or only to the operative portion, and whether in the former event, the Government was competent in 1954 to take a different view.

The order of 1946, whatever it means, was certainly by the Ruler. When Brijkishore, the adopted son says that he would (and could) have taken steps to get it modified, he does not mean that there was any higher appellate or revising authority; but that he would have got it modified by the same authority in the manner apparent, more than once in the history of this very Jagir. The main point is that the context itself had changed sometime after the passing of the Durbar order. As already noted, when in a departmental matter a higher authority just dittoes, usually by using the words "as proposed" or "approved" and the like, we would deem that the operative portion alone has been approved. What lies behind the operative portion, namely, the account of the history or the reasoning, is not necessarily approved unless, of course, the order itself contains something to that effect; for example, it may say "for reasons contained in paragraph such and such, or in the marked passages, I approve". In the present instance, the Durbar had only written "Gujarish approved" and the gujarish itself, was to refuse mutation in the life-time of the mother. Whether mutation could or should have been allowed on the death of the mother or whether the shikmi jagirdar should have had to wait till there was an occasion for mutation for the parent jagir, are problems which we are not called upon to decide. But actually, that seems to be the effect of the rules in the Qawayad. After the Durbar order

was made, there was a new event, and that alone justified the reconsideration. Yet another new event was the preparation for the abolition of the jagir. If the adoptive son had acquiesced in the status of a maintenance holder, he would, at the time of paying compensation, have approached the Jagir Commissioner u/s 9 of the Jagirdari Abolition Act, 1961. He might either have got the entire allowance, or something less after a scaling down. But he did not acquiesce in it and therefore, it became, after the mother's death, a dispute regarding succession, and that had to be decided by Government departmentally under Rule 95 of the Qawayad.

Finally, the parties have, in our opinion, rather unnecessarily, gone into the merits. These proceedings are really under Article 226 in regard to administrative or executive action; but even if they were under Article 227, this Court will not substitute its decision on merits. It will only see whether the administrative authority or the tribunal as the case may be, was really acting in exercise of the powers it has under the law or rule, and in good faith and in accordance With accepted notions of fairplay and natural justice. If on consideration of the merits it happens to arrive at a decision different from what the authority or the tribunal has arrived at, still, it will not thwart its opinion on them. To do so, would be to frustrate the very purpose with which certain matters are left within the discretion of administrative authorities or within the judicial or quasi-judicial competence of special tribunals.

Here, it is evident that Government has the power. Even so, the history of this shikmi jagir clearly indicates that it is not a straight-forward case 135 of a life-grant, that is, a non-heritable shikmi jagir automatically reverting to the parent jagir. To say the least, it was an arguable point whether after the sanction of the adoption, the shikmi jagir was a life-grant or was a heritable one. To be sure it was described as, and was in fact, a life tenure in 1914. But where the very authority that grants the shikmi jagir also sanctions the adoption, the adopted son can plausibly claim to succeed to the shikmi jagir as heir. On behalf of the Petitioner, it is pointed out that even apart from the shikmi jagir; the adoptive son may come into the picture as a reversioner to the parent jagir in the event of the holder of the parent jagir dying issueless. But that is a remote eventuality and even there, if a parent jagirdar dies without any son, the Government may consider and resume it. The very purpose for which the sanction was sought and granted has the effect of bringing into the picture a son to Onkarlal. Thus, the adoption has changed the situation and at all events, a party which says this, is not indulging in a mere pretence. Government which feels called upon under Rule 95 to decide whether after the death of the widow, the shikmi jagir should revert to the parent jagir, as being nonheritable, or whether it should descend to the adopted son, is not really waltzing with a shadow, but is dealing with a dispute about which two views are possible. In 1952, it took the view that the son should be a maintenance-holder, and the shikmi jagir itself should merge into the parent jagir. In arriving at it, Government had committed two mistakes; first, it omitted to hear the person most concerned; secondly, it blindly adopted the Jagir

Commissioner's interpretation of the Ruler's remark "Gujarish approved," put under the office-note in 1946, without hearing the son, and without making sure that he had any occasion to say anything about it. When these were brought to its notice, Government again acted departmentally, and chose one of the two alternatives that presented themselves; it did not act mala fide or depart from the main purpose of the jagirdari system. Further on this occasion, the Minister and the Secretary gave a full hearing to both the parties.

AH things considered, we find that it is not a case in which this Court should interfere under Article 226, either by issue of a writ or direction of the nature of mandamus or one of the nature of certiorari on a quasi-judicial tribunal, or correct the order by exercising supervisory powers under Article 22.

The petition is dismissed and the opposite party No. 2 shall get costs and pleader's fee of Rs. 200 from the Petitioner.