

(1963) 01 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 300-D of 1957

Kunwar Vir Rajindra Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 28-01-1963

Acts Referred:

Constitution of India, 1950 — Article 19(1), 291, 294, 31, 362

Citation : AIR 1963 P&H 461

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : D.K. Kapur, for the Appellant; Jindra Lal, M.K. Nambya, C.K. Daphatry, P.L. Vohra and Yogeshwar Dayal, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—This petition under Article 226 of the Constitution of India is directed against the order of the President recognising his Highness Maharaj Rana Shri Hemant Singh as the Ruler of Dholpur State. This notification was published in the Gazette of India dated the 22nd of December, 1956, as SRO 3086, in Part II, Section 3.

2. The last Ruler of the State was Maharaj Rana Udai Bhan Singh. He died on the 22nd of October, 1954, without leaving any direct male lineal descendant. The following pedigree-table will disclose the relations he left behind:

MAJARAJ	RANA	KIRAT	SINGH		
					Kr. Jhande Kr. Pohop Singh Maharaj Rana
Singh Bhagwant Singh					Kr. Kulendra Singh Maharaj Rana Nihal Singh
Maharaj Rana Maharaj Rana Kr. Birendra Kr. Keshav Udai Bhan Singh Singh					
(the last incumbent)					
					Kr. Upendra Kr. Ajai
					Singh Singh Malvendra Kaur
Urmila Devi(daughter)					(wife) (married to His Highness (Respondent No. 3

Maharaja of Nabha | adopted by Malvandra | | Kaur on the husband's | | authority after the | | husband's death). _____ | _____ |
 | | | | Hanumant Singh Hemant Singh Himmat Singh | |
 _____ | _____ | | Kr. Vir Rajendra Singh(Petitioner) Kr. Vir Bhartendra Singh

3. On the death of Maharaj Rana Udai Bhan Singh there were as many as nine claimants to the State of Dholpur, who represented to Government for recognition. In the present petition we are only concerned with two of them because the other seven have not challenged the order of the President recognising Hemant Singh as the Ruler. The two contesting claimants are: Hemant Singh, daughter's son of the late Ruler, and KR. Vir Rajendra Singh, who claims to be the brother's son of the late Ruler. In the returns filed by the State and respondent No. 3 it is alleged that the petitioner Kr. Vir Rajendra Singh's father Kr. Birendra Singh was not the lawful son of Maharaj Rana Nihal Singh.

4. In order to ascertain as to who was best entitled to succeed as the Ruler, Government of India issued a notification dated the 12th February, 1955, appointing a Committee to examine the claims of the various claimants. This Committee was to submit its report to the Government by the 1st of April, 1955. The Committee was constituted as under:

- (1) Shri K N. Wanchoo, Chief Justice of the Rajasthan High Court Chairman.
- (2) Colonel His Highness Maharaja Sir Brajindra Sawai Bfijendra Singhjit Bahadur Jang, Maharaja of Bharatpur; and
- (3) Brigadier His Highness Maharao Shri Sir Bkim Singhjit Bahadur, K. C. S. 1., Maharao of Kotah.

This notification is annexure "B" to the petition and was followed by a second notification annexure R/1, dated the 14th of March, 1955. This notification was also in the same terms, but only the time limit fixed for the report in the first notification was eliminated. Then follows that third notification dated the 8th of September, 1955 annexure R/2 to the return filed by the State, By this third notification the constitution of the Committee was changed and Maharaja of Dungarpur replaced the Maharao of Kotah. This change came about after the Committee, as originally constituted, had held a sitting. No business was transacted at that sitting excepting that the parties did appear before the Committee. Before the reconstituted Committee there was a hearing on the 19th of September, 1955, and the claim of two out of the nine claimants was rejected. The hearings of the Committee were held between 11th October, 1955, to 24th of April, 1956, on various dates and then arguments started from the 24th of April, 1956, and concluded on the 3rd of May, 1956. The Committee in due course, submitted its report and thereafter followed the impugned notification whereby the President recognised Hemant Singh as the Ruler of Dholpur State. The petitioner fully participated at the hearings before the reconstituted committee.

5. On the 30th August, 1956, the petitioner intimated to the Government of India by an application that the question of succession had to be decided in accordance with Article 14 of the Covenant of the United States of Rajasthan.. The petitioner's case is that he is the nearest in the male line of succession according to the law and custom applicable to this family and being in the line of succession should have been recognised in preference to the daughter's son of the late Ruler, who alleges to be the adopted son of the late Ruler. the adoption being made by his widow after his death on the purported authority of her husband. The petitioner made various attempts to obtain the report of the Committee presided over by Wanchoo C. I., but was not supplied with a copy of the same. Suffice it to say that the President recognised respondent No. 3 as the Ruler of Dholpur State, in preference to the petitioner and this recognition has led to the present petition.

6. When the petition was filed, respondent No. 3 was not impleaded. Respondent No. 3 made an application for being impleaded as a party and by an order of Falshaw, J. (as he then was) dated the 21st of March, 1958, he was impleaded as a party. Both the Union of India and respondent No. 3 have filed their returns and contest the petition.

7. The central argument of Mr. D. K. Kapur, learned counsel for the petitioner, is that the act of the President in recognising the respondent Hemant Singh as the Ruler of Dholpur is ultra vires the Constitution of India as well as the laws governing the family of the late Ruler. This argument has been presented in many facets and it will be proper to detail the same hereinafter.

8. it is contended that the Covenant entered into by the Rulers of the United States of Rajasthan so far as it is not contrary or conflicting with the Constitution of India is the law today and according to Article XIV of the Covenant the question of disputed succession to the Gaddi could only be decided by the Council of Rulers after referring it to the High Court of United States of Rajasthan. Recognition of a Ruler in case of disputed succession contrary to Article XIV of the Covenant is of no consequence. The petitioner is not trying to enforce the Covenant: all that he is showing is that the decision of the President in recognising the respondent Hemant Singh as the Ruler is against law and so not justified.

9. it is then urged in the alternative that respondent No. 3's recognition as Ruler cannot be justified by recourse to Article 366(22). Art 366(22) defines a Ruler and the definition is merely for the purposes of the Constitution of India. It does not confer any power on the President to determine as to who is the Ruler. The President can only recognise a Ruler, for, recognition by its very concept implies that there must be a Ruler in fact who is being recognised and not that in the garb of recognition, the fact which is to be recognised can be determined.

10. The argument proceeds thus; that on the death of the late Ruler question arose as to who is to succeed to him. That question could only be determined

either under Article XIV of the Constitution of the United States of Rajasthan or in accordance with the ordinary rule of succession, that is, the Hindu Law, in one case by the Special Tribunal and in the other by the ordinary civil Courts. It is only when this determination had taken place that the question of recognition would arise. There is no provision either in the Constitution of India or in any other law applicable to the parties which authorises the President to settle this matter. So the matter had to be settled as mentioned earlier before the President could act under Article 366(22) and recognise respondent No. 3 as the Ruler.

11. The recognition of respondent No. 3 as Ruler is against the Rule of succession governing the family and this recognition has deprived the petitioner to his rights in or to property and, therefore, is of no consequence as it offends Articles 19(1)(f) and 31 of the Constitution of India. Article 14 of the Constitution is also pressed into service for the argument that between two citizen) of India dispute as to succession cannot be settled on a different basis merely-because one of them happens to claim succession to a Ruler, who none the less is a citizen of India.

12. On the other hand, it has been contended by Mr. Nambiar learned counsel for respondent No. 3 Hemant Singh, that under Article 366(22) of the Constitution the President has the exclusive power to recognise or not to recognise a Ruler. The President's power of recognition is not controlled by Article XIV, of the Covenant inasmuch as Article XIV stands repealed or abrogated as it is inconsistent with the Constitution of India, inasmuch as by reason of the proclamation dated the 23rd of November, 1949, by the Rajpramukh of the United States of Rajasthan, the Constitution of India was to be the Constitution of the United States of Rajasthan and did supersede and abrogate all other constitutional provisions inconsistent with the Constitution of India.

13. it is further contended that the paramountcy, which the British Crown enjoyed vis-a-vis the States; in fact and de jure has devolved on the President by reason of Article 366(22) for it has been enacted in recognition and in pursuance of that fact.

14. it is also contended that the power of recognition, which is exercised by the President under Article 366(22) of the Constitution, is a political power and as such it is beyond the jurisdiction of the civil Courts. In this connection reliance is placed on the decision of the Supreme Court in *Umrao Singh Ajit Singhji and Another Vs. Bhagwati Singh Balbir Singh, minor and Others*,

15. it is also pointed out that in substance what the petitioner is seeking in this petition is the enforcement of the Covenant and as such this petition is incompetent in view of the provisions of Article 363 of the Constitution of India.

16. Mr. Daphtry, learned counsel for the Union of India, contends that the power of recognition enjoyed by the President under Article 366(22) of the Constitution is purely an executive and political power. It has nothing to do with the right in or to property which the petitioner may have as the successor to the deceased

Ruler. He refers to the Covenant and points out that the property is "divided into two categories in the Covenant--(1) the private property of the Ruler, of which, under the Covenant, he has been made the full owner; and (2) the public property of the Ruler. So far as the succession to the Ruler's private property is concerned it is not governed by any provisions in the Constitution of India. Recognition of a Ruler under Article 366(22) is merely for the purpose; of the Constitution. The Constitution merely provides for certain privileges, rights and powers that are being enjoyed by a Ruler and the Ruler's privy purse. It has nothing to do with the private property of any person who may also be a ruler or may be recognised for the time being as a Ruler. The Ruler, as the definition would indicate is a person who entered into a Covenant as is referred to in Clause (1) of Article 291 and who for the time being is recognised by the President as the Ruler of the State, and also includes any person who for the time being is recognised by the President as the successor of such Ruler. Therefore, the learned counsel contends that the recognition is for a limited purpose, that is, to determine as to who should enjoy certain rights, powers and privileges or the privy purse guaranteed by the various Covenants entered into with the Government of India by the various Rulers of the erstwhile Indian States for which a provision has been made in the Constitution. But it would not make such rights etc., a heritable property as they are not justiciable by reason of Article 363 of the Constitution. The same are now more or less in the nature of a grant for they devolve on him, whom the President recognises as a Ruler under Article 366(22) of the Constitution. There is no provision in the Constitution as to how the President is to exercise the power of recognition under Article 366(22). It is the recognition that makes the Ruler and the words "for the time being" in this Article clearly show that the recognition may be withdrawn or varied. Recognition the counsel contends in this context is really the power of selection. Therefore, the act of the President recognising a Ruler does not affect any property to which the petitioner has a right to succeed as the next heir of the Ruler.

17. it is also "contended that so far as Article XIV of the Covenant is concerned, it is almost a dead letter. After the States Re-organisation Act, there is no Council of Rulers and there is no High Court of the United States of Rajasthan and, therefore the machinery provided by Article XIV of the Covenant, being non-existent and the Article being inconsistent with the powers of the President under Article 366(22) of the Constitution has no bearing on the controversy. The President while deciding whom to recognise may obtain information from any source he wants and in the present case he chose to obtain that information from the Chief Justice, including two Rulers of the States forming the United States of Rajasthan which ultimately merged in the present State of Rajasthan.

18. Before considering the respective arguments of the learned counsel for the parties, it will be proper to examine the legislative history, as the learned counsel for the parties put it, leading to the Covenant and Article 366(22) of the Constitution. The State of Dholpur was formed in the year 1806. It is undisputed

that all the Indian States were vassal States of the British Crown. The British Crown exercised the paramount power and could either depose a Ruler or refuse to recognise him according to the ordinary rule of succession and instead recognise any other remoter heir or even a stranger as the Ruler. This power was exercised by the British Crown during the Indian History at various occasions and this position is accepted by the learned counsel for all the parties. In the year 1935, Government of India Act, 1935, was enacted. For our purposes, reference need only be made to the following sections of this Act:

"2.--(1) All rights, authority and jurisdiction heretofore belonging to his Majesty the King, Emperor of India which appertain or are incidental to the Government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except insofar as may be otherwise provided by or under this Act, or as may be otherwise directed by his Majesty:

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised only by, or by persons acting under the authority of His Majesty's Representative for the exercise of those functions of the Crown.

(2) * * * *

3. -- (1) * * * *

(2) His Majesty's Representative of the Crown in its relations with Indian States is appointed by His Majesty, in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) it shall be lawful for His Majesty to appoint one person to fill both the said offices.

6.--(1) A state shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors:

(a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

(b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his

instrument of Accession :

Provided that an instrument of Accession may be executed conditionally on the establishment of of this Federation oh or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may by a supplementary instrument executed by him and accepted by His Majesty, vary the instrument of Accession of his State by extending the functions -which by virtue of that instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any instrument of Accession or supplementary instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act:

Provided that after the establishment of the Federation, if any. Instrument has in fact been accepted by His Majesty, the validity of that instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the instrument.

(5) It shall be a term of every instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary instrument, be construed as extending the functions which by virtue of the instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An instrument of Accession or supplementary instrument shall not be valid unless it is executed by the Ruler himself, but subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address

praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the instrument by virtue of which a State has so acceded, construed together with any supplementary instrument executed under this section, is referred to as the instrument of Accession of that State.

(9) As soon as may be after any instrument of Accession or supplementary instrument has been accepted by His Majesty under this section, copies of the instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all Courts shall take judicial notice of every such instrument and Acceptance.

285. Subject in the case of a Federated State to the provisions of the instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

311. (1) In this Act and unless the context otherwise requires, in any other Act the following expressions have the meanings hereby respectively assigned to them, that is to say :

"Indian State includes any territory, whether described as a State, an Estate, a jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being part of British India; "Ruler" in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State.

* * * * "

19. These provisions clearly indicate that the British Crown maintained its paramountcy over the Indian States and it was the Crown's Representative who, on behalf of the Crown, exercised that power vis-a-vis each of the Indian States. This Act was followed by the Indian Independence Act, 1947, and for our purposes it will only be necessary to quote Section 7 of this Act which is in these terms:

"(1) As from the appointed day :

(a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;

(b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in

relation to Indian States by treaty, grant, usage sufferance or otherwise; and

(c) there lapse also any treaties" or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this sub-section, effect shall as nearly as may be continued to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal- Style and Titles of the words "India Imperator" and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm."

This section did away with the paramountcy so far as the British Crown is concerned as regards the Indian States. In view of the Indian independence Act, 1947, the Government of India Act, 1935, was amended. Section 6 of the amended Act is in these terms:

6--(1) An Indian State shall be deemed to have acceded to the Dominion if the Governor-General has signified his acceptance of and instrument of Accession executed by the Ruler thereof whereby the Ruler on- behalf of the State:

(a) declares that he accedes to the Dominion with the intent that the Governor-General, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of his instrument of Accession, but subject always to the terms thereof, and for the purposes only of the (Dominion, exercise in relation to the State such functions as may be vested in them by order under this Act; and

(b) assumes the obligation of ensuring that due effect is given within the Slate to the provisions of this Act so far as they are applicable therein by virtue of the instrument of Accession.

(2) An instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Dominion Legislature may make laws for the State, and the limitations, if any, to which the power of the Dominion Legislature to make laws for the State, and the exercise of the executive authority of the Dominion in the State, are respectively to be subject.

(3) A Ruler may, by a supplementary instrument executed by him and accepted

by the Governor-General, vary the instrument of Accession of his State by extending the functions which by virtue of that instrument are exercisable by any Dominion authority, in relation to his State.

(4) References in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State whether by reason of the Ruler's minority or for any other reason,

(5) in this Act a State which has acceded to the Dominion is referred to as an Acceding State and the instrument by virtue of which a State has so acceded construed together with any supplementary instrument executed under this section, is referred to as the instrument of Accession of that State.

(6) As soon as may be after any instrument of Accession or supplementary instrument has been accepted by the Governor-General under this section, copies of the instrument and of the Governor-General's acceptance thereof shall be laid before the Dominion Legislature and all Courts shall take judicial notice of every such instrument and acceptance."

In the amended Act, Sections 2 3, and 285 to 287 were omitted. So also from Section 311, the definition of "Indian State" and "Ruler" were omitted. u/s 5, the Dominion of India came into being. -The Dominion included the Provinces etc. and the acceding Indian States. It may be mentioned that by the 15th August, 1947, practically all the States had acceded either to India or to Pakistan and had executed instruments of Accession. As a matter of fact, some of these States had merged with the neighbouring Provinces. In pursuance of the instrument of Accession Certain Covenants and guarantees were agreed upon between the Government of India and the acceding States. The rights and privileges of the Rulers and their privy purses etc. were settled. By a Covenant entered in February, 1948, the four States of Alwar, Sharatpur, Karauli and Dholpur formed themselves into the Matsya Union. I may mention here that these Covenants are really the Constitution of the States as they emerged after the Indian independence Act. On this all the parties are agreed. The Matsya Union entered into a revised instrument of Accession on the 7th of October, 1948, and on the 20th October, 1948, this accession was recognised by the Government of India. On the 3rd of March, 1949, 14 Rulers, other than of Matsya Union, formed the United States of Rajasthan and on the 10th of May 1949, Matsya Union decided to integrate itself with the United States of Rajasthan; and on the 15th of May, 1949, the integration came about and a revised Covenant was entered into. This was followed by the proclamation by the United States of Rajasthan dated the 23rd of November, 1949, and on the 26th of November, 1949, Articles 366 and 394 of the Constitution came into force. The Constitution of India ultimately came into force on the 26th of January, 1950. It was provided in the proclamation of the 23rd of November, 1949, that the Constitution of India will apply and will supersede all inconsistent constitutional provisions in the Covenant of the United States of Rajasthan. This is the entire legislative background in the light of which the present controversy has to be determined.

20. Before dealing with the various contentions urged before me by the respective counsel for the parties it will be proper at this stage to determine the sum total of the effect of the constitutional changes which have taken place right from the Government of India Act, 1935, up to the date when the Constitution of India came into being. It would only be necessary for this purpose to refer to the decision of the Supreme Court in *Virendra Singh and Others Vs. The State of Uttar Pradesh*, Bose J. who spoke for the Court has noticed all these constitutional provisions with regard to the States of Charkari and Sairila and the pattern of this change is almost identical vis-a-vis all the other erstwhile Indian States. I would only quote, for the sake of convenience some of the observations and conclusions of the learned Judge. At page 452 it is observed :

"(23) Now it is undoubted that the accessions and the acceptance of them by the Dominion of India were acts of State into whose competency no municipal Court could enquire; nor can any Court in India, after the Constitution, accept jurisdiction to settle any dispute arising out of them because of Article 363 and the proviso to Article 131; all they can do is to register the fact of accession; see Section 6 of the Government of India Act, 1935 relating to the Accession of States. But what then?

Whether the Privy Council view is correct or that put forward by Chief Justice Marshall in its broadest outlines is more proper, all authorities are agreed that it is within the competence of the new sovereign to accord recognition to existing rights in the conquered or ceded territories and, by legislation or otherwise, to apply its own laws to them; and these laws can, and indeed when the occasion arises must, be examined and interpreted by the Municipal Courts of the absorbing State."

At page 453 the learned Judge states the effect of the Constitution on the merger of the States and his Lordship's observations are :

"(29) Now what effect did the Constitution have on that? in our opinion, the Constitution, by reason of the authority derived from and conferred by, the peoples of this land, blotted out in one magnificent sweep all vestiges of arbitrary and despotic power in the territories of India and over its citizens and lands and prohibited just such acts of arbitrary power as the State now seeks to uphold."

Then again at page 454 the following observations are very instructive:

"Every vestige of sovereignty was abandoned by the Dominion of India and by the States and surrendered to the peoples of the land who through their representatives in the Constituent Assembly hammered out for themselves a new Constitution in which all were citizens in a new order having but one tie, and owing but one allegiance: devotion, loyalty, fidelity, to the Sovereign Democratic Republic that is India. At one stroke all other territorial allegiances" were wiped out and the past was obliterated except where expressly preserved; at one moment of time the new order was born with its new allegiance springing from the same source for all, grounded on the same basis: the sovereign will of the

peoples of India with no class, no caste, no race, no creed, no distinction, no reservation.

(30) The preamble to the Constitution recites in its magnificent prelude :

"We The people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens: Justice, Liberty, Equality, Fraternity;

In our Constituent Assembly this 26th day of November 1949, do hereby Adopt, Enact and Give to Ourselves This Constitution".

(31) Article 1(1) sets out that India shall be a Union of States and Clauses (2) and (3) define the territories of which India shall be composed. They include the territories in which the disputed lands are situated. Article 5 defines Indian citizens. They include in their wide embrace the Rulers of Charkhari and Sarila who made the grants, the petitioners who received them and those who now seek as an act of State to make the confiscation it is impossible for a sovereign, to exercise an act of State against its own subjects. However disputable the proposition may be that an act of State can be exercised against a citizen who was once an alien the right being only in abeyance till exercised, there has never been any doubt that it can never be exercised against one who has always been a citizen from the beginning in territory which has from its inception belonged to the State seeking to exercise the right.....

(33) This was also quite clearly the will of the Union Government as expressed in its white Paper, so even if the case was still one of cession there is clear evidence of relinquishment and waiver. At page 115 it is said :

" "With the inauguration of the new Constitution, the merged "States have lost all vestiges of existence as separate entities.""

21. At this stage therefore, it will be proper to examine the argument of Mr. Nambiar that the paramountcy which the British Crown enjoyed vis-a-vis the Indian State is in some measure now enjoyed by the Central Government and the same is now embodied in Articles 291 294(a), 362 363 and 366(22) of the Constitution of India and has merely to be stated to be rejected. The observations of the Supreme Court in *Virendra Singh and Others Vs. The State of Uttar Pradesh*, directly run counter to this argument. The very concept of paramountcy assumes that there is a paramount State and a vassal State. But if there is no vassal State, no question of paramountcy can arise. The Constitutional changes after the independence of India as Bose, J. In *Virendra Singh and Others Vs. The State of Uttar Pradesh*, observed, vest all sovereignty in the people of India. Moreover none of the erstwhile States have any territory over which a ruler rules so that it can be said that the Government of India exercises or can exercise its so called paramount powers assuming that it inherited the same from the British Crown. Whatever semblance of political power was left with the Rulers came to an end after the reorganisation of the

States in pursuance of the States Re-organisation Act (Act No. 37 of 1956)- in this view of the matter the argument of Mr. Nambiar must be repelled.

22. The various provisions in the Constitution of India regarding the Rulers of the erstwhile Indian States, do not deal in any manner with the private property of the Rulers. They merely confine themselves to certain Rights, privileges, powers and the privy purse. Whenever the President accords recognition to a Ruler he by virtue of that recognition enjoys all those rights, privileges, powers and the privy purse but the recognition does not in any way, deprive the legal heirs of the Ruler to his private property according to law and custom governing the family of the Ruler. Reference in this connection may be made to the decision of the Supreme Court in *Sri Sudhansu Shekhar Singh Deo Vs. The State of Orissa and Another*, No provision has been brought to my notice which, in any manner, affects the private property of any Ruler. As a matter of fact, the argument of Mr. D. K. Kapur proceeded on the basis that the act of the President affects the property of the Ruler and, therefore, is ultra vires of the Articles 19(1) and 31 of the Constitution. On the other hand the argument of Mr. Daphtary proceeds on the basis that the orders of the President does not, in any manner, affect the private property of the Ruler. All it affects is his status as such and the recognition under Article 366(22) of the Constitution entitles him to enjoy the rights privileges, powers and the privy purse, which cannot, in any manner be termed as property, because they can only be enjoyed if the Ruler is recognised and their enforcement is not justiciable as will be apparent from Article 363 of the Constitution. Therefore, the short Question that has to be resolved is: Can the rights, privileges, powers and the privy purse of the Ruler be termed property as envisaged by Articles 19(1) and 31 of the Constitution?

23. It is no doubt true that the term "property" in Article 19(1) should be given liberal and wide connotation and would cover all those wellrecognised types of interests which have the insignia or characteristics of proprietary right. See in this connection the observations of their Lordships of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, Generally "property" connotes whatever a man produces by the labour of his hand or his brain, whatever, he obtains in exchange for something of his own and whatever is given to, him, the law will protect him in the use, enjoyment and disposition of. See Cooley's Constitutional Law page 392 and also Bentham Authority on Legislation, page 113. It, therefore, follows that nothing can be the subject of property which is not recognised by law to be such "and similarly, when the law withdraws such recognition a thing from which recognition it withdrawn ceases to be property. See in this connection *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, . It also follows from the decision of the Supreme Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , that the rights to property guaranteed by Article 19(1) mean the rights which by themselves and taken independently are capable of being acquired, held or disposed of as property. If the aforesaid considerations are kept in view it will be apparent that the rights

guaranteed to a Ruler, under the Constitution cannot" be said to be property because it is only when the President recognises a person as a Ruler that those rights vest in him. . It cannot be said that to get recognition from the President as a Ruler is itself property. Therefore the argument of Mr. Daphtary that the claim of the petitioner to be recognised as a Ruler is not property and the fundamental right of the petitioner under Article 19(1) is not infringed, must prevail, for those rights, privileges etc. accrue as a consequence of recognition as Ruler by the President. Independently of that recognition they have no existence. Therefore the grievance that the petitioner is deprived of his right to property under Article 19(1)(f) is unfounded.

24. The sum total of the aforesaid discussion is that the private property of a Ruler after his death is not governed by any of the provisions in the Constitution. This has been fairly and frankly conceded by Mr. Daphtary. The recognition of his successor as Ruler only confers on him the privileges guaranteed by the Covenant & will not necessarily make him the heir to the deceased Ruler's private property. The privileges etc., guaranteed by the Constitution are purely personal privileges and are nothing more than merely grants in view of the constitutional changes that have taken place up-to-date inasmuch as, there is no provision in the Constitution which makes it obligatory on the President to recognise a Ruler or his successor. The Covenant entered into by the Ruler and the Government of India is not justiciable and therefore its enforcement is wholly left to the good sense of the Government as is the case in all political settlements. It must therefore, be assumed that in all fairness the President will respect the various Covenants, already referred to and would recognise a successor but it cannot be said that any particular person has a right to get recognised as a successor to the Ruler.

The power to recognise a successor is vested in the President. There are no guiding principles laid down in the Constitution how that power is to be exercised. All that can be said is that the power should not be arbitrarily exercised but should be exercised fairly and squarely. It cannot be said that this was not done in this case. The President appointed a High Powered Committee to go into the question of disputed succession inter se the various claimants. Those claimants appeared before the Committee and placed their respective cases before it. The Committee submitted its report to the President and after considering the report the President selected the respondent Hemant Singh for recognition as the Ruler. Therefore no grievance can be made on the score that the President exercised his power of recognition under Article 366(22) in an arbitrary manner. In view of the fact that the rights that accrue on such recognition are merely in the nature of a grant it must be held that they are not "property" within the meaning of Article 19(1) of the Constitution. Property implies what a person can acquire, hold or dispose of as of right. A thing granted only becomes property after it is granted. Grant by its very nature implies that someone else has the right to the thing and therefore nothing vests in [the grantee till the grant is made and continues. The rights and privileges conferred

on the Ruler under the Covenant being purely personal as observed by their Lordships of the Supreme Court in *Sri Sudhansu Shekhar Singh Deo Vs. The State of Orissa and Another*, come to an end on his death. They are not heritable for they can only be enjoyed by a person who is recognised as a Ruler by the President and do not devolve as of right on the next heir. It is no doubt true that under the Covenant a right to succeed to the Ruler is guaranteed to the heirs of the Ruler. As I have already pointed out, this right not being a justiciable right by reason of Article 363 of the Constitution is of no avail. The right to the Ruler's personal property, however, would be governed by the personal law applicable to him and as conceded by Mr. Daphtary is enforceable in the ordinary Tribunals of the land.

25. For the reasons given above I would reject the argument of Mr D. K. Kapur that the recognition by the President of respondent No. J Hemant Singh in any manner offends Article 19(IXf) of the Constitution.

26. The next question that arises for determination is as to what right the petitioner is seeking to enforce by this writ. If the petition is closely examined it will be apparent that the rights guaranteed by the Covenant are sought to be enforced. The grievance is that the succession to the deceased Ruler has not been determined in accordance with the procedure prescribed in the Covenant. In the alternative it is contended that the succession to the gaddi should have been determined in accordance with the law or custom applicable to the Ruler. All that Article XIV of the Covenant guarantees is that the succession to the Ruler shall be in accordance with the law and custom applicable to the gaddi of each of the Covenanting States and so also to the personal rights, privileges, dignities and titles of the Ruler. The Covenant does provide how a dispute as to succession is to be settled. It is to be decided by the Council of Rulers after the matter has been referred to the High Court of the United State of Rajasthan and in accordance with the advice of that High Court. After the States Re-organisation Act, there is neither a council of Rulers nor a High Court of the United State of Rajasthan, therefore, this provision in the Covenant with regard to the settlement of disputed succession has become redundant. Even if it were not, the same is of no avail for it cannot be enforced by reason of Article 363 of the Constitution and no argument can be built on its basis. : The rights, privileges etc. though embodied in :the Constitution of India are dependant as already pointed out on the good Sense of the Government.

It is also significant that the Covenant nowhere provides for the recognition of the Ruler or his successor by the President. Therefore, the contention that the President can only recognise the successor to the Ruler after the same has been determined in accordance with Article 14 of the Covenant is more-or less an attempt to enforce the Covenant without specifically saying so. In this situation it would be proper to hold that the rights guaranteed by the Covenant and recognised by the Constitution of India are merely political rights. I am supported in this conclusion by the observations of the Supreme Court, in *Umrao*

Singh Ajit Singhji and Another Vs. Bhagwati Singh Balbir Singh, minor and Others, The rights etc. guaranteed by the Covenant are not justiciable : vide Article 363 of the Constitution. A right which cannot be enforced in law cannot be said to be a right to which any person can claim to be entitled as of right. Courts can only recognise those rights which can be enforced in law.,

If I am correct in my conclusion that these rights etc. are merely political rights, the question of recognition certainly, is a political question. The definition of Ruler in Article 366(22) also justifies this conclusion. The Ruler According to the definition is one who has been recognised as such by the President. This recognition would imply selection of a Ruler and the President would be within his right to select one out of a number of persons who lay claim to the gaddi of the deceased Ruler. This view derives further support from the fact that in the Constitution there is no provision how and in what manner the President is to exercise the power of recognition embodied in Article 366(22). There can be no Ruler unless he answers the definition or in other words is for the time being recognised by the President. The words "for the time being" clearly contemplate that the President may withdraw recognition accorded to a person as a Ruler and in his place recognise another person as a Ruler. All rights that a Ruler enjoys under the Constitution can only be enjoyed by one who answers the definition that is by a person who is recognised as a Ruler. There can be no Ruler if there is no recognition by the President. Therefore the argument of Mr. D. K. Kapur that there must be a Ruler in fact before he can, be recognised is fallacious and must be repelled.

27. in view of my conclusion that the rights guaranteed by the Covenant are merely political rights the argument based on the provisions of Articles 14 and 19(1)(f) of the Constitution has no meaning.

28. For the reasons given above, I see no force in this petition. I would accordingly dismiss the same but in the circumstances of the case will make no order as to costs.