

(2006) 07 AHC CK 0163

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10097 of 1989

Madhya Pradesh State

APPELLANT

Vs

District Judge, Dinesh Chandra and Mahesh Chandra and
Raja Krishna Singh

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Arbitration Act, 1940 — Section 34

Constitution of India, 1950 — Article 291, 362, 363, 7, 7(2)

Citation : (2006) 4 AWC 4205

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : R.P. Tiwari and S.S. Bhatnagar, for the Appellant; V.K. Barman, Pankaj Barman, M.K. Nigam, Rahul Sahai and J.K. Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard. Shri R.P. Tewari on behalf of the petitioner, Shri V.K. Burman, Senior Advocate on behalf of the respondents No. 2 and 3, Standing Counsel on behalf of respondent No. 1.

2. The property described as Bagh Bundela situate in Vrindavan City at Mathura comprising of a house and vacant land more precisely described in the plaint, was the property of princely state known as Datia State situate in the State of Madhya Pradesh. After India was declared independent the ruler of the Datia State signed an instrument of accession of the State to the Dominion of India. At that stage Inventories describing personal property of the ruler of Datia State and the state properties were finalized. According to the petitioner the property in dispute was the state property hence under the agreement dated 26.12.1949 it vested in the State of Madhya Pradesh. The petitioner as such was in possession over the same through its tenant. The property has been recorded as state property in the municipal records of Mathura more precisely under the

management of the Gwalior Division, Gwalior.

3. The respondent No. 3 however executed a registered sale deed in respect of the said Bagh Bundela in favour of Smt. Suman Agrawal, respondent No. 2. Since according to the State of Madhya Pradesh the ex ruler had no title over the property the transfer executed by him was a nullity. The State of Madhya Pradesh, therefore, filed Original Suit No. 79 of 1984 for a declaration that the sale deed dated 1.11.1983 was null and void.

4. On notices being issued in the suit proceedings to the defendant (respondent No. 2 and 3) instead of filing any written statement the defendants filed application u/s 34 of the Indian Arbitration Act with reference to Clause 2 of Article 7 of the agreement executed between the Governor General of India and Ex-ruler of the State of Madhya Pradesh, formerly known as United State of Vindya Pradesh. For ready reference Article 7 may be quoted herein below:

ARTICLE 7:

1. The rule of each Covenanting State shall be entitled to full owner-ship and enjoyment of all private properties (as distinct from private properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh in pursuance of the Covenant.

2. If any dispute arises as to whether any item of property is the private property of the rule or State property, it shall be referred to a judicial officer to be nominated by the Government of India, and the decision of that officer shall be final and binding on all parties concerned.

5. The application was filed on behalf of the defendants was opposed by the petitioner plaintiff on the ground that no objection with regards to the title over the property in question being the property of State was ever raised by the ex-ruler nor he claimed any title/ownership over the property subsequent to agreement dated 26.12.1949 as would be apparent, inventories of the personal property of the ex-ruler of the State which was finalized in the year 1950.

6. The II Additional Civil Judge, Mathura vide order dated 12.5.1987 rejected the application filed by the defendants u/s 34 of the Arbitration Act for the reasons recorded in the order itself.

7. Defendants (respondent No. 2 and 3} not being satisfied with the order so passed filed Misc. Appeal No. 105 of 1987 before the District Judge, Mathura. The District Judge, Mathura by means of his order dated 9th November, 1987 has allowed the Appeal and has recorded a finding that the of the defendant No. 3 namely the ex-ruler the property to be his personal and, therefore, question of title has necessarily to be decided by the Arbitrator u/s 7 of the agreement referred to above. It is against this order of the learned Single Judge that the present writ petition has been filed by the State of Madhya Pradesh.

8. On behalf of the petitioner it is contended that all agreements which were

executed between the Governor General of India and Ex-ruler of the State of Madhya Pradesh have ceased to exist in the eyes of law after the introduction of Article 291 read with Article 362 of Constitution of India. The legal position in that regard has been settled by the Constitution Bench of the Hon'ble Supreme Court in the case of Shri Raghunathrao Ganpatrao Vs. Union of India, In view of the said judgment the agreement relied upon by the defendants including its Clause 7 (2) cease to have any existence in the eyes of law and, therefore, the application u/s 34 of the Arbitration Act itself was misconceived. It is further submitted that it is not necessary for this Court to enter into the scope of the agreement entered into between Governor General of India and Ex-ruler of the State of Madhya Pradesh in the year 1949 and the writ petition deserves to be allowed only on the ground as mentioned herein above.

9. On behalf of the defendants, Shri V.K. Burman made an attempt to explain the term of the agreement which was executed between Governor General of India and Ex-ruler of the State of Madhya Pradesh as well as to establish that the dispute of title as involved in the suit was necessarily covered by the agreement specifically Article 7 of the deed executed on 26.12.1949 and, therefore, it is contended that the order passed by the District Judge in Misc. Appeal No. 106 of 1987 dated 9.11.1987 calls for no interference.

10. I have heard counsel for the parties and gone through the records of the case.

11. It is not in dispute that the application u/s 34 of the Arbitration Act was filed on behalf of the defendants with reference to Article 7(2) of the agreement executed between the Governor General of India and Ex-ruler of the State of Madhya Pradesh dated 26.12.1949. All such agreements lost existence in the eye of law subsequent to introduction of Article 291 and 362 to the Constitution of India (vide 26th Amendment Act, 1971), The Hon'ble Supreme Court in paragraph 76 of the judgment in the case of Shri Raghunatha Rao Ganpata Rao v. Union of India (Supra) has held as follows:

Therefore, there cannot be any justification in saying that the guarantees and assurances given to the Rulers were sacrosanct and the Articles 291 and 362 reflected only the terms of the agreements and covenants. In fact as soon as the Constitution came into force, the Memoranda of Agreements executed and ratified by the States and Union of States were embodied in formal agreements under the relevant Articles of the Constitution and no obligation flowed from those agreements and covenants but only from the constitutional provisions. To say differently, after the introduction of Articles 291 and 362 in the Constitution, the agreements and covenants have no existence at all. The reference to Covenants and Agreements was casual and subsidiary and the source of obligation flowed only from the Constitution, Therefore, the contention urged on the use of the words "guaranteed" or "assured" is without any force and absolutely untenable.

12. It necessarily follows that with the introduction of the aforesaid Articles 291 and 362 vide 26th Amendment Act of 1971 the agreement of 26,12,1949 became a dead letter as a whole and no part of it including Clause 7(2) remained enforceable. Shri V.K. Burman however, contended that the judgment of the Hon'ble Supreme Court is confined to the issue of payment of privy purse only. The said judgment has no application in respect of the part of the agreement entered into between Governor General of India and Ex-ruler of the State of Madhya Pradesh in so far as it pertains to the private properties of the ex-ruler. The contention so raised on behalf of the respondents may be dealt with herein under:

a. If the agreement entered into between the Governor General of India and Ex-ruler of the State of Madhya Pradesh as a whole ceased to exist in view of the introduction of Article 291 and 362 of the Constitution of India as held by the Hon'ble Supreme Court in the case of Shri Raghunatha Rao Ganpata Rao v. Union of India (Supra) there is little or no scope to contend that a part of the agreement still survived. It is to be kept in mind that all such agreements were executed basically for the purposes of conferring of privy purse upon the ex-ruler. Therefore, when the agreement itself has become inoperative by operation of law as a whole no part of it as suggested by the counsels can be saved,

b. Article 363 of the Constitution of India declares that no Court of law including the Hon'ble Supreme Court shall have jurisdiction over any dispute arising out of any provision of treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler or an Indian State and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

13. In view of the aforesaid constitutional provision no Court of Law has jurisdiction over any rights occurring under or any liability or obligation arising out of any of the provisions of the said agreement treaty etc. entered into between any Ruler of Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party executed prior to the commencement of the Constitution of India and, therefore, the Civil Court at Mathura could not have entertained any issue which in turn was based upon the provisions of an agreement dated 26.12.1949 between Governor General of India and Ex-ruler of the State of Madhya Pradesh.

14. In view of the aforesaid conclusion arrived at by this Court the application as filed by the defendants u/s 34 of the Arbitration Act is based upon a clause of an agreement entered into between the Governor General of India and Ex-ruler of the State of Madhya Pradesh which has become non-existent in the eyes of law for the reasons stated above, was totally misconceived and was liable to be rejected. The learned District Judge while allowing the Appeal No. 106 of 1987

has failed to take consideration of the aforesaid legal aspects of the matter. The order so passed cannot be legally sustained. The order dated 9.11.1987 is hereby quashed. Writ petition is allowed.

15. The Trial Court is directed to consider and decide the Original Suit No* 79 of 1984 preferably within six months from the date a certified copy of this order is filed before the Trial Court. It is understood that no unnecessary adjournment shall be granted.