

(1951) 12 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Miscellaneous Case No. 1 of 1951

Manohar Singh Ji

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-12-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 13(1), 14, 19(1), 226, 31(1)
Rajasthan Ordinance, 1948 — Section 8A
Rajasthan Ordinance, 1949 — Section 4

Citation : AIR 1953 Raj 22 : (1952) RLW 81

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : U.M. Trivedi and Jeewan Singh, for the Appellant; Mansha Ram, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Rao Sahib Manohar Singhji, Jagirdar of Bedla under Article 226 of the Constitution of India against the State of Rajasthan for the issue of writ of mandamus or such further and other writ direction or order as may seem fit and proper.

2. The case of the applicant is that he is the owner of the Jagir of Bedla which is situate in the former State of Mewar, now included in the State of Rajasthan. The former State of Mewar was integrated in 1948 to form what was known as the former United State of Rajasthan. There was a further integration in April and May 1949 by which the former United State of Rajasthan was amalgamated with the former State of Bikaner, Jaipur, Jaisalmer, and Jodhpur and the former Union of Matsya to form the present United State of Rajasthan. The former State of Rajasthan passed three Ordinances; No. XXVII of 1948, No. X and No. XV of 1949 in connection with the Jagirs there. By virtue of the powers under these Ordinances, the former State of Rajasthan assumed management of the Jagirs including the Jagirs of Bedla. The applicant alleged that these three Ordinances

were ultra vires of the Constitution of Mewar which was continued by the Administration Ordinance No. 1 of 1948 of the former United State of Rajasthan. It is further contended that these Ordinances, in any case, became void under Article 13(1) of the Constitution of India read with Articles 14 and 31. After the present State of Rajasthan came into existence finally in May 1949, these Ordinances remained in force in a part of the area of the present State with the result that while the management of the Jagirs was taken by the State in that area, the Jagirs in the rest of Rajasthan remained with the Jagirdars. Consequently, there was discrimination as between Jagirdars and Jagirdars and the Jagirdars of the area covered by the former State of Rajasthan were denied equality before the law and the equal protection of the laws in view of the continuance of these Ordinances. Therefore, the Ordinances became void on the coming into force of the Constitution of India on the 26th of January, 1950.

3. It was also alleged that the State had taken possession of the property of the applicant by virtue of the provisions of these Ordinances and no compensation was provided for the taking of such possession and, therefore, these Ordinances were ultra vires and void.

4. The application was opposed on behalf of the State. It was denied that the applicant was the owner of the Jagir though it was admitted that he was the holder of it. The Jagir was a State grant and was held at the pleasure of the ruler. Such a Jagir automatically reverted to the ruler on the death of the holder and was regranted to the successor after the ruler had recognised the succession. The rights of the holder of the Jagir were not heritable or transferable nor could the Jagir be partitioned amongst the lawful heirs of the Jagirdars. There could be no adoption also by the Jagirdar without the approval of the ruler and it was always open to the State to resume the grant or vary the terms on which it was held and thus the Jagirdar had no proprietary right in the Jagir. Therefore, even if it be that the State took possession of the Jagir of the applicant, he is not entitled to compensation under Article 31 and, therefore, the Ordinances, on the basis of which the State acted, were not void under Article 13(1) read with Article 31(2) of the Constitution of India.

5. In the alternative, it is urged that with the merger of the State of Mewar in the former United State of Rajasthan and thereafter in the present State of Rajasthan, there was change of sovereignty twice and even if the applicant had any rights in pursuance of any grant by the Ruler of Mewar, that was not binding against the successor States. In any case, the impugned Ordinances did not deprive the Jagirdars of their property and had merely the effect of transferring the management of Jagirs to the Government and, therefore, they were not hit by Article 31(2). It was also denied that the Ordinances became invalid on the ground that they were hit by Article 14 of the Constitution. Finally it was urged that no writ should be granted in the applicant's favour as he had approached this Court with a good deal of delay and that, in any case, he had an alternative remedy open by way of a civil suit.

6. We shall first dispose of the question of delay. There was obvious delay in the presentation of the petition inasmuch as the Constitution of India had come into force about a year before the petition was presented. The applicant was, therefore, asked to explain the delay in the presentation of the petition even before its admission. The explanation he has given is that the interference with his possession took place when Ordinance No. X of 1949 was passed and the Government of the former State of Rajasthan took over the collection of rent on the 2nd of February, 1949. A representation was then made to His Highness the Rajpramukh of the former State of Rajasthan in March 1949 but before anything could be done, the present State of Rajasthan came into existence. Thereupon representation was made to His Highness the Rajpramukh of the present State of Rajasthan and in particular it was said that the Government officials were taking possession of the private property also. Thereupon a letter was issued by the Administration forbidding the officials from doing anything beyond what was permitted by law. Thereafter, representation was made to the then Chief Minister of Rajasthan. Then in August 1949, a representation was made to Shri V. P. Menon, Secretary to the States Ministry and thereafter a Jagir Commission was appointed by the Government of India to report on the Jagirdari system. The matter was represented to this Commission, the report of which was published in April 1950. Thereafter representations were again made to the Chief Minister in May 1950 and then again before Shri V. P. Menon in September and October, 1950. These discussions continued right up to December 1950 and when the applicant was convinced that nothing would be done, he made the present application in January 1951. We consider that the delay in this case has been satisfactorily explained and there is no reason for refusing the writ simply on the ground of delay.

7. The next point is whether the applicant has an adequate alternative remedy. It is urged that he can file a suit against the State if he thinks that he has been illegally deprived of his property. Normally a person who is deprived of his property has a right to file a suit and should go to the Civil Court and should not invoke the extraordinary jurisdiction of this Court. But the only point which would arise for decision if a suit were to be filed in this case is whether these Ordinances which have been mentioned above are void in view of the provisions of Part III of the Constitution. By a recent amendment to Section 113 of the Code of Civil Procedure, the following proviso has been added: --

"Provided that where the court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefore, and refer the same for the opinion of the High Court."

8. We are of opinion that even if a suit had been filed by the applicant in the proper civil court, the question whether the three Ordinances were valid or otherwise would have been referred to this Court under this proviso. Under these circumstances, we do not think that we should dismiss the present petition now after we have heard the arguments only because a suit was not filed, for, if the suit were filed, the matter would still be referred to this Court for decision. We may also point out that such reference would usually be at the initial stage before other questions arising in the case are decided and, therefore, we would not have more material before us even if the matter had come before us on a reference. In this view of the matter, even though the applicant might be in a position to file a suit as there is no bar in any law against his filing a suit, we are not disposed to dismiss the petition on this ground alone.

9. We now turn to the question whether the three impugned Ordinances are invalid under Article 13(1) of the Constitution read with Article 31(2). So far as Ordinance No. XXVII of 1948 is concerned it merely abolishes certain powers of the Jagirdars in respect of certain matters which are in modern times normally under the control of the Government but which on account of certain historical reasons into which we need not go were vested in the Jagirdars in the former State of Rajasthan. So far, therefore, as this Ordinance is concerned we find nothing in it which affect the property rights of Jagirdars. It seems that the applicant has mentioned this Ordinance because the other two Ordinances, namely, Nos. X and XV of 1949 which affect his rights are amendments to this original Ordinance. By Section 3 of Ordinance No. X of 1949, a new Section 8 (A) was added to the original Ordinance and it was provided therein that the revenue which had till then been collected by the Jagirdars would in future be collected by the State and the State will, after deducting collection and other charges, pay the balance to the Jagirdar. Then followed the second amendment by Ordinance No. XV of 1949 which defines "Jagirdar" and "Revenue" u/s 2 and included u/s 3 taxes, cesses and other revenue from forests also among the revenue to be collected by the State. The main attack of the applicant is on these provisions of the two Ordinances of 1949 by which the State took over the management of the Jagirs and started collecting revenue of all kinds through State agency. The contention of the applicant is that by so doing, the State took possession of his immovable property and the law which authorised the State to take such possession neither provided for compensation nor fixed the amount of compensation or the principles on which and the manner in which the compensation was to be determined and given.

10. The reply of the State to this contention is that in the first place, the Jagirdar had no right of property whatsoever in the Jagir and the Jagir was under the law held at the pleasure of the State and the State could resume it at any time. In the second place, it was urged that even if the Jagirdar had any property in the Jagir and the State could not resume the Jagir at will, no property of the Jagirdar was in fact taken into possession by the State and, therefore, Article 31(2) would not apply. It was urged that merely because the management was taken over,

the Jagirdar was not deprived of the possession of the Jagir and in particular of the benefits following from it because he was to be given the balance of the income after deducting collection and other charges.

11. We are of opinion that it is not necessary on account of the view we are taking on the second contention on behalf of the State to decide whether the Jagirdar has any property right in the Jagir and whether the State can resume it at will. We are also of opinion that it is not necessary for the same reason to decide whether on account of the integration, first of certain former -States into the former United State of Rajasthan and later of the former United State of Rajasthan with certain other former States to form the present State of Rajasthan, there was such change in sovereignty as would deprive the Jagirdar of any rights which he might have had when the former State of Mewar (was?) in existence. We shall assume for present purposes that the Jagirdar has some kind of property rights in his Jagir and that the State cannot resume it arbitrarily and that the change of sovereignty was not of such a nature as would deprive the Jagirdar of whatever rights he originally possessed before the process of integration began. It is enough to say that if it was necessary to decide these questions, our decision might have been in favour of the petitioner; but we shall leave these questions open and assume for present purposes that the applicant has some kind of property right in his Jagir and that the Jagir could not be arbitrarily resumed by the State and that the change of sovereignty that has taken place has not affected whatever rights the applicant had in the former State of Mewar.

12. The question which then arises is whether the provisions of Ordinances Nos. X and XV of 1949 which we have mentioned above are hit by Article 31(2) of the Constitution. Before, however, we deal with this matter, we may dispose of one argument on behalf of the applicant which is based on Part IV Article 13, Clause (1) of the Constitution of the formes State of Mewar. That clause reads as follows:

"No person shall be deprived of his life liberty or property without due process of law, nor shall any person be denied equality before the Jaw within the territories of Mewar."

13. Learned counsel for the applicant argues that this Constitution continued in force even after coming into existence of the former United State of Rajasthan in 1948. He has cited a number of authorities from the United States of America on the "due process" clause and submits that in view of those authorities, the provisions of Ordinances Nos. X and XV of 1949 which we have mentioned above are void. Learned Government Advocate, however, submits that on the coming into existence of the former United State of Rajasthan in which the former State of Mewar was merged, the Constitution of Mewar came to an end and, therefore, it is unnecessary to consider this particular provision of the Constitution of Mewar. In this connection our attention has been drawn to Ordinance No. 1 of 1948 of the former State of Mewar which provided in Section 3 that all laws, Ordinances, Acts, Rules, Regulations, and Notifications having the force of law in

any Covenanting State continued to remain in force until repealed or amended by a competent authority or unless otherwise provided in that Ordinance or any other Ordinance. It is urged that Part I Article I Clause 1 of the Constitution of Mewar says that this Constitution shall be the Supreme Law of Mewar and as; such the Constitution of Mewar being a law was saved to the extent mentioned in Section 3 of Ordinance No. 1 of 1948. We are, however, of opinion that when the former State of Mewar came to an end by integrating with other States to form the former United State of Rajasthan, the Constitution of the former State of Mewar must by force of circumstances and logic of facts be deemed to have come to an end. Fundamental rights are peculiarly within the province of the Constitution and, therefore, when Ordinance No. 1 of 1948 of former State of Rajasthan provided for the governance of the former United State of Rajasthan and did not provide for any fundamental rights, the Constitution of Mewar and particularly that part of it which dealt with the governance of the former State of Mewar and with fundamental rights must be deemed to have been abrogated. The applicant, therefore, cannot found any argument on Part IV, Article 13, Clause 1 of the Constitution of Mewar and his case must rest only on the provisions of the Constitution of India. It is, therefore, not necessary to consider in detail the American cases on the interpretation of "due process of law" for present purposes.

14. We now turn to Article 31(2). The crucial point which falls for consideration is whether the State has taken possession of any property of the applicant and whether mere taking over of the management would amount to taking possession of the property. It appears that perhaps in the beginning when Ordinances Nos. X and XV of 1949, came into force, the subordinate officials acted a little too zealously and interfered with all kinds of rights of Jagirdars. But we have to look to the position which has crystallized now to decide whether the two Ordinances of 1949 are hit by Article 31(2). That position will be clear from certain orders which have been passed by the Government from time to time. A book containing such orders has been produced before us on behalf of the applicant and it is not denied that the orders contained in the book are correct. These orders may be divided into two parts. The first set of orders provide what should be done with the revenue that is to be collected. Those orders are contained in two Government Orders, namely No. 1107/X/49 of 20th August 1949 and Memo No. F. 4 (306) Rev. 11/50 dated the 22nd of July 1950. By the first order, which was marked "Confidential", the Jagirdars were allowed a certain percentage out of the amount actually collected minus chauth and Chakri or tribute. The allowances were on the following basis:

Rs. 2000 or below

95%

Rs. 2001 to 20000

80% but not less than Rs. 1900/-

Rs. 20001 to 50000

(55% but not less than Rs. 16000/-

Rs. 50001 to 100000

50% but not less than 32500/-

Rs. above Rs. 100000

40% but not less than 50,000/-

15. This order also made it clear that this amount was to be paid pending final decision. The second order was to the effect that the Jagirdars might be informed that provisionally the following percentages (the scale was the same which has been given above) of the amounts actually collected as income from their Jagirs after deducting of Chauth, Chakri or tribute would be paid to them. The amounts to be collected as collection fees or other charges were under the consideration of the Government & as soon as the decision was arrived at, the Jagirdars would be informed of the same.

16. The contention of the applicant with respect to this set of orders is that by these orders, the Jagirdars were deprived of a substantial amount of their income without any compensation and therefore, the two Ordinances of 1949 were hit by Article 31(2) of the Constitution of India. We are, however, of opinion that this is not so. The orders are provisional and accounting will have to be done finally. We have no reason to suppose that the State will fix arbitrary amounts as collection charges or as other charges. We have also no reason to suppose that after these charges have been fixed, if there is any balance which still remains due to Jagirdars, it will not be paid to him. In this connection, our attention was particularly drawn to the words "other charges" which appear in Section 8 A added by Ordinance No. X of 1949. It is urged that under the cover of these words, the State may deduct any amount from the income and thus practically confiscate it. Here again we see no reason to hold that the State will act in this arbitrary manner and the other charges which are yet to be fixed would not be reasonable. The applicant has not been able to show to us that so far the State has made any unreasonable deductions from the income of his Jagir. On a consideration, therefore, of these orders, we are of opinion that it cannot be said that the State is taking away the movable property of the applicant in the form of income from the Jagir without any compensation. The amount which will be finally payable to the applicant is still a matter of accounting and there is no reason to suppose that accounting will be done in an arbitrary manner. These provisions of Ordinances Nos. X and XV of 1949 cannot be said to be hit by Article 31(2) on this ground.

17. The Government has also issued a second set of orders with respect to the management of the Jagirs. The position, as it has finalized, appears in a number of orders of which we may mention the following:

Letter No. P. 4 (305) Rev. 1/50 dated 14th October 1950 from the Revenue Secretary to the Government of Rajasthan to the Jagir Commissioner, Udaipur, and Letter No. F.4(306) Rev. 1/50 dated the 22nd January 1951 from the Revenue Secretary, Government of Rajasthan to the Jagir Commissioner. Udaipur.

Letter No. F. 4 (306) Rev. 1/50 dated the 22nd January 1951 from the Revenue Secretary to the Commissioner of Udaipur and Kotah. There are other letters also in the booklet which has been supplied to us but it is unnecessary to refer to them. These three letters which we have mentioned show that only the work of collection of revenue now remains with the State & the rest of the management like granting of Pattas, control over unoccupied lands, realization of irrigation dues for the tanks belonging to the Jagirdars, disposal of lands which fall vacant due to abandonment or death without heirs grant for maintenance of Chhutbhais rent of building taken from the Jagirdars for Government purposes and so on, have all been left to the Jagirdar. Thus, the Government has only taken possession of the management in so far as it relates to the collection of revenue and also the management of forests for which provisionally 35 per cent. of the forest income is being deducted on an ad hoc basis for supervision and administrative charges. Mere taking over of the management of this kind does not, in our opinion, amount to taking possession within the meaning of Article 31(2). As we have already pointed out, the various rights that go with the possession of the Jagir like the granting of pattas, control over unoccupied lands which fall vacant due to abandonment or death without heirs and making of grants to Chhutbhais, etc., all remain in the Jagirdar. The State has only taken over the right to collect the revenue. It cannot, in our opinion, be said that a mere right to collect re-venue is property. As has been pointed out in the recent decision by Venkatarama Ayyar J. of the Madras High Court in -- "Rajah of Bobbili v. State of Madras", Civil Misc. Petn. No. 894 of 1951 (Mad) dealing with the validity of the Madras Estates Land (Reduction of Rent) Act (Act No. XXX of 1947), "A right to collect rent, even putting it as high as a right to manage the properties, is nothing more than a power", what the State has done is to take away that power but it has not taken possession of any [property of the Jagirdar. The position of the State is somewhat analogous to that of an agent. If, for example, the Jagirdar appointed an agent to collect rents, there would be no transfer of possession from the Jagirdar to the agent. By this law, therefore, the Government has in a sense become statutory agent of the Jagirdar for the purposes of collection.

In this connection, we may refer to the case of -- Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, In that case the Government had taken possession of the Sholapur Spinning and Weaving Company and an application for writ was filed by one of the share-holders and it was contended that the act which authorised the Government to take over the management was unconstitutional in view of Article 31 of the Constitution. Mukherjea J. dealing with this matter held that though the impugned act had affected some of the rights which the share holder has to participate in the management of the

Company, it could not be said that the petitioner had been dispossessed from his property in the Mills. The analogy, in our opinion, applies to this case also and though one power which the Jagirdars used to have namely, the power to collect rent has been taken away by the impugned Ordinances, there has been no dispossession of the Jagirdar from his property by these two Ordinances of 1949. Nor can it be said that taking over of this power of collection is an unreasonable restriction on the fundamental right of the applicant to acquire, hold and dispose of property, for, the, main rights, as we have already shown are still in the Jagirdar and merely the right to collect the rent has been taken away. This restriction, cannot, in our opinion, be called unreasonable particularly, as the collection of rent is always made through somebody and in this case the law provides that the State will be the statutory agent of the Jagirdar for that purpose.

We are, therefore, of opinion that the two provisions of Ordinances Nos. X and XV of 1949 which have been attacked are not void under Article 13(1) of the Constitution read with Article 31(2) or of 19(1)(f).

18. We now turn to the question whether these provisions of the Ordinances are hit by Article 14 of the Constitution which provides that the State shall deny to any person equally before the law or the equal protection of the laws. The argument on behalf of the applicant is that these provisions existed in the former State of Rajasthan and when the present State of Rajasthan was formed in April and May 1949, the Jagirdars of only a part of the present State of Rajasthan could not collect their rents while Jagirdars in other areas which were covered by the former State of Jaipur, Bikaner, Jaisalmer, Jodhpur and the Matsya Union were at liberty to collect their rents. There was thus distinct inequality before the law as between the Jagirdars of one portion of the State and another portion of the State and when the Constitution came into force on the 26th of January 1950, these Ordinances became void under Article 13(1) in so far as they were inconsistent with Article 14.

19. Learned counsel for the State, however, contends that the Ordinances by themselves, when they were passed, did not create any discrimination and that the discrimination, if any, arose out of extraneous circumstances due to the integration of April and May 1949. He, therefore, urges that as this discrimination has arisen out of extraneous circumstances, the provisions of Ordinances Nos. X and XV of 1949 to which we have referred are not hit by Article 14. He also places reliance in this connection on -- *Ramjilal Vs. Income Tax Officer, Mohindargarh*, In that case, on the formation of the State of P. E. P. S. U., the laws prevailing in Patiala State became applicable to the other States and the laws of the other States were repealed subject to the proviso that proceedings of any nature whatsoever pending on such date in the courts or offices of any Covenanted State shall be disposed of in accordance with the governing such proceeding in force for the time being in any such State. The applicant Ramjilal belonged to the State of Nabha. In that State, there was no Income Tax before

the formation of the State of P. E. P. S. U. Consequently the Patiala Income Tax Act which was higher than the Income Tax act prevailing in Kapurthala before the date of integration, namely, the 20th of August, 1948 became applicable to Nabha. In Kapurthala, however, Income Tax assessments were pending under the Kapurthala Act which prescribed a lower rate. Thereupon, Ramjilal made an application for writ on the ground that there was discrimination. This application was dismissed and the following observation occurs at page 100:

"The discrimination, if any, was not brought by the two Ordinances, but by the circumstances that there was no Income Tax Act in Nabha and consequently there was no case of assessment pending against any Nabha assesseees. In any case the provision that pending proceedings should be concluded according to the law applicable at the time when the rights or liabilities accrued and the proceedings commenced is a reasonable law founded upon a reasonable classification of the assesseees which is permissible under the equal protection clause and to which no exemption can be taken. In our opinion the grievance, of the alleged infringement of fundamental rights under Article 14 is not well founded at all."

20. There is no doubt that in the present case also the discrimination was not in the two Ordinances themselves but arose after the integration of April and May, 1949 on account of the fact that there was no similar law in the former States of Jaipur, Bikaner, Jaisalmer, Jodhpur and Matsya Union. Here, however, the similarity between the present case and Ramjilal's case ends. In Ramjilal's case only the pending proceedings were allowed to be decided according to the law which existed when the proceedings arose and thereafter, the Patiala law was to apply equally throughout the State. But in the present case, there is no question of any pending proceedings & inequality definitely arose between Jagirdars of one part of the present State of Rajasthan and of another part as soon as the integration took place in April and May 1949. So long as the Constitution did not come into force, there was no objection to this inequality continuing; but as soon as the Constitution came into force on the 26th of January 1950, all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they were inconsistent with the provision of Part III relating to fundamental rights became void to the extent of such inconsistency. There is no doubt that on the 26th of January, 1950, any law which was in force in Rajasthan and which denied to any" person equality before the law or the equal protection of the laws became void to that extent. We are, therefore, of opinion that the principle of -- Ramjilal Vs. Income Tax Officer, Mohindargarh, does not apply to the facts of the case before us, for we are not dealing with a case of pending proceedings. If these two Ordinances of 1949 are never to be hit by Article 14 on the ground that when they were passed, there was no inequality in them, the provision of Article 13 would become a dead letter and all laws in force previous to the 26th of January, 1950 would continue to be followed in spite of Article 13(1), even though they may be hit by the various articles contained in Part III of the Constitution. We are, therefore, of opinion that unless

the discrimination which has come to exist from the 26th of January 1950 in this matter can be justified on the ground of classification, these provisions of Ordinances Nos. X and XV must be held to have become void.

21. It has been well settled in America that the equality clause does not mean that the Legislature cannot make distinctions and classifications for the purposes of legislation. There has been a long string of cases on the provision of equal protection clause of the Fourteenth Amendment, and we may refer to some of them briefly to show the scope and extent of this protection.

22. In -- *Taylor Strauder v. State of West Virginia*" (1880) 100 US 303 a law making only the Whites eligible for sitting on the jury in the State of West Virginia was declared unconstitutional on the ground that it denied equal protection of the laws to Negroes. Classification on the basis merely of race was thus not accepted.

23. In -- *"John Hayes v. State of Missouri"* (1887) 120 U.S. 68, the State of Missouri made a law allowing fifteen peremptory challenges to jurors in criminal cases in cities with a population of over 100,000, while only eight peremptory challenges were allowed elsewhere. In this case it was urged that there was discrimination, inasmuch as fifteen challenges were allowed in a part of the State, and only eight in others. It was held that there was no discrimination, and that it was a mere classification, and the basis was a reasonable one, namely, more challenges were allowed in bigger cities for various reasons than elsewhere.

24. In -- *"Homer Adolph Plessy v. John H. Ferguson"* (1896) 163 U.S. 537, the State of Louisiana provided by law that railway companies in the State shall provide separate railway carriages for the white and coloured races. This was challenged as against the Fourteenth Amendment, which provided for equal protection. But the law was upheld on the ground that as there was equal provision for both the white and coloured races, there was no denial of equal protection of the laws. There was a dissentient judgment in this case by one of the Judges.

25. In -- *"Chicago, Burlington & Quincy Railroad Co. v. City of Chicago"* (1897) 166 U.S. 226, the question for consideration was whether the law could discriminate in the matter of compensation between a railroad company and an individual. The question arose with respect to compensation to the railroad company for laying out a street across the railway lines. It was held that "a railroad company is not denied the equal protection of the laws by awarding it merely nominal compensation for the laying out of a street across its road, while individual property owners are given the value of their land which is taken". The distinction, which was drawn, was that the land of the railroad company, over which the street passed, was not really taken away, for the railroad company, in any case, would use it only for the purpose of passage of trains, which still remained to it.

26. In -- *"Francis C. Welch v. George B. Swasey"* (1909) 214 U.S. 91, a question

arose whether it was within the power of the City of Boston to provide for different heights of buildings in commercial and residential districts. It was held that the division into residential and commercial districts was reasonable, and there was a reasonable justification for providing different heights in different kinds of districts.

27. In -- "*Al Williams v. State of Arkansas*" (1910) 217 U.S. 79, a question arose whether the State of Arkansas could prohibit solicitation of business or patronage on railway trains and premises of common carriers. It was held that the prohibition in these particular places was a reasonable classification based on good reasons, and the law was not hit by the equal protection clause.

28. In -- "*Stuart Lindsay v. Natural Carbonic Gas Co.*" (1911) 220 U.S. 61, a question arose whether the New York State could forbid pumping from wells penetrating into the rock and drawing of mineral water from a common source of supply. It was held that it was reasonable to classify according to the source of supply and also according to whether the boring had penetrated into the rock or not. The tests required for the application of the equal protection clause were mentioned at page 73 in these words:

"The rules by which this contention must be tested as is shown by repeated decisions of this court, are these: 1. The equal-protection clause of the 14th Amendment does not take from the state the power to classify in the adaptation of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. when the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

29. In -- "*Crescent Cotton Oil Co. v. State of Mississippi*" (1921) 257 U.S. 129, a certain law was passed by the State of Mississippi forbidding certain corporation from owning or operating any cotton gin, where such corporations were interested in the manufacture of cotton-seed oil or cotton-seed meal. The prohibition applied only to non-resident corporations, but not to individuals. It was held that the inherent difference between corporations and natural persons was sufficient to sustain a classification making restriction upon the right of non-residents to do business in the state applicable to corporations alone.

30. In -- "*Joseph Radice v. People of the State of New York*" (1924) 264 US 292, a question arose whether the law passed by the New York State prohibiting women from working in restaurants between certain hours of the night with certain exceptions was hit by the equal protection clause. The discrimination that

was urged was said to be that the law applied only to first and second class cities and not to the rest of the State, and that certain women were exempted. It was held that the classification between first and second class cities and the rest of the State was a reasonable one. It was also held that exemption of certain women would not be hit by the equal protection clause. In this connection we may refer to the following passage at page 297 in justification of the classification which was made:

"It (the state) is free to recognize degrees of harm, and it may confine its restriction to those classes of cases where the need is deemed to be clearest. As has been said, it may "proceed cautiously step by step" and "if an evil is specially experienced in a particular branch of business" it is not necessary that the prohibition "should be couched in all embracing terms". If the law presumably hits the evil where it is most felt, it is not to be over thrown because there are other instances to which it might have been applied. Upon this principle, which has had abundant illustration in the decisions cited below it cannot be concluded that the failure to extend the act to other and distinct lines of business, having their own circumstances and conditions, or to domestic service, created an arbitrary discrimination as against the proprietors of hotels."

31. In -- *George Weems Williams v. Mayor and City Counsel of Baltimore, and Mayor, Counsellor, and Aldermen of the City of Annapolis*" (1933) 289 US 36, the State of Maryland passed a law in favour of a single railroad company which was going insolvent. It was urged that this was against the equal protection clause of the Fourteenth Amendment. The law was, however, upheld on the ground that even one railroad company, which was going insolvent, could be singled out for help, and the reasonable basis for classification in that particular case was held to be that the railroad in particular connected the capital of the State with the most populous city of the State and it was in the public interest that the railroad company which had become insolvent, should not be allowed to be wound up, and the railway should continue to run.

32. In -- "*Francis Barbier v. Patrick Connolly*" (1885) 113 U.S. 27, an Ordinance of the City and County of San Francisco prohibiting the carrying on of public laundries and wash houses within certain prescribed limits of the city and county, from ten O" clock at night until six O" clock in the morning, came up for consideration as it was being urged that it was unconstitutional in view of the Fourteenth Amendment. The Ordinance was, however, held constitutional and the following observations made in this case may be quoted:

"From the very necessities of society, legislation of a special character, having these objects in view must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed not to impose unequal or unnecessary restrictions upon anyone, but to

promote, with as little individual inconvenience as possible, the general good. Though in many respects, necessarily special in their character they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favouring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated is not within the Amendment."

33. Lastly, we may refer to --"Frank J. Bowman v. Edward A. Lewis" (1880) 101 U.S. 22. That was a case where the law in the State of Missouri provided one set of courts for another part of the State. From one part of the State, appeals went to the Supreme Court of Missouri while from another part they went to the St. Louis Court of Appeals. It was held that there was nothing in the Constitution to prevent any State from adopting any system of laws and judicature if it saw fit for all or any part of its territory. In particular it was also pointed out that:

"The plaintiff in error has had the benefit of the right of appeal to the full extent enjoyed by any member of the profession in other parts of the State. In the outside countries they have but one appeal, from the circuit Court to the Supreme Court. In St. Louis, he had the benefit of an appeal from the circuit Court of St. Louis County to the St. Louis Court of Appeals. This is as much as he could ask, even if his rights of appeal were to be nicely measured by the right enjoyed in the outside countries. The Constitution of the State has provided two courts of appeal for different portions of its territory: the St. Louis Court of Appeals for one portion, and the Supreme Court for another portion. It is not for us, nor any other tribunal, to say that these courts do not afford equal security for the due administration of the laws of Missouri within their respective jurisdiction."

We may also refer to another passage in this case, which is as follows:

"If a Mexican State should be acquired by treaty and added to an adjoining State or part of a State, in the United States and the two should be erected, into a new State, it cannot be doubted that such new State might allow the Mexican laws and judicature to continue unchanged in the one portion, and the common law and its corresponding judicature in the other portion. Such an arrangement would not be prohibited by any fair construction at the 14th Amendment. It would not be based on any respect of persons or classes, but on municipal considerations alone, and a regard to the welfare of all classes within the particular territory of jurisdiction."

34. A review of all these authorities leads us to the conclusion that if there is some reasonable basis for a classification based on any reasonable differentiation, it is permissible for a State to have different laws in different parts of it. But these cases show that there must be some reasonable basis, and the law must not discriminate purely arbitrarily. We may in this connection refer

to the following observations of Das J. in the case of -- Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, already cited, at page 65, as these observations, if we may say so with great respect, put the law very succinctly :

" "Equal protection of the Laws", as observed by Day J. in -- Southern Railway Co. v. Greane" (1910) 216 U.S. 400 "means subjection to equal laws, applying alike to all in the same situation". The inhibition of the Article that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against legislative discrimination amongst equals and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not, however, mean that every law must have universal application, for all persons are not, by nature, attainment or circumstances, in the same position. The varying needs of different classes of persons often require, separate treatment and it is, therefore, established by judicial decisions that the equal protection clause of the Fourteenth Amendment of the American Constitution does not take away from the State the power to classify persons for legislative purposes. This classification may be on different basis. It may be geographical or according to objects or occupations or the like. If law deals equally with all of a certain well-defined class it is not obnoxious and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons and, therefore, there is no discrimination amongst equals. It is plain that every classification is in some degree likely to produce some inequality, but mere production of inequality is not by itself enough. The inequality produced, in order to encounter the challenge of the Constitution, must be "actually and palpably unreasonable and arbitrary". Said Day J. in -- "Southern Railway Co., v. Greane" (1910) 216 U.S. 400 Supra:

"While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed: and the classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification".

35. Applying these principles, we have, therefore, to see whether the continuation of these provisions of Ordinances Nos. X and XV of 1949, which relate only to a part of the present State of Rajasthan, is justified on any classification based upon some real and substantial distinction. The distinction, which has been pointed out in this case, is geographical distinction which has happened to come about because there was a certain law in a certain part of the present State, while similar laws were non-existent in other parts. There is no doubt that it is possible to have a classification based on geographical distinction but such distinction must be based on the particular needs of that geographical area which are distinct, and real as compared to the needs of the remaining

geographical area. Special laws applying to particular geographical areas in special parts of various States in India are well-known; but all those special laws are based on special needs of those particular areas.

36. We may, in particular, refer to the passage in -- "Frank J. Bowman v. Edward A. Lewis" (1880) 101 U.S. 22 relating to the hypothetical case of annexation of a part of the Mexican State by the United States. Though the observations are merely as an illustration, they are entitled to great weight. But we must point out that the justification for continuing different laws and procedure in one part of the State as against another appears in the following words of that passage, which we should like to emphasise:

"It would not be based on any respect of person or classes, but on municipal consideration alone, and a regard to the welfare of all classes within the particular territory or jurisdiction."

37. There is no doubt that if the Ordinances, with which we are dealing, can be justified with regard to the welfare of all classes of a particular territory or jurisdiction, that would give a reasonable basis for classification, and the Ordinances would not be hit by Article 14 of the Constitution.

38. It would be well in this connection to refer to the preambles of these three Ordinances to find out the justification for their enactment. The preamble to Ordinance No. XXVII of 1948 says this:

"Whereas with a view to have a common, uniform, efficient and progressive administration throughout the United State of Rajasthan including the Jagir areas also, it is expedient to provide for the abolition of all judicial and police powers so far vested in Jagirdars or enjoyed by them and also to provide for certain other purposes;"

We have already pointed out that so far as the abolition of police and judicial powers are concerned, the Ordinance is perfectly valid, and cannot be challenged. There is, however, nothing in this preamble to show that there was any reason for taking away from the Jagirdars the power to collect revenue, to which they were entitled.

39. The preamble to Ordinance No. X of 1949 merely says that it is expedient to amend Ordinance No. XXVII of 1948, so as to apply it also to powers regarding revenue and forests. So far as the administrative powers of the Jagirdar with respect to revenue and forests are concerned, no objection could be taken to their being taken away in the same way as judicial and police powers had been taken away by the earlier Ordinance. Section 7A, which was being introduced, refers to the administrative powers of the Jagirdars with respect to revenue and forests. But as we have pointed out, the applicant is challenging not Section 7A, but Section 8A, which, if we may say so without meaning disrespect, has been smuggled into this amending Ordinance.

40. As for Ordinance No. XV of 1949, the preamble merely says that it is

expedient further to amend Ordinance No. XXVII of 1948. There is nothing, therefore, even in the preamble to this Ordinance which would justify the taking away of the power of collecting revenue from the Jagirdars of the former State of Rajasthan. It might have been possible to justify this taking away of powers by stating in the preamble that the conditions in the former State of Rajasthan were such that it was necessary to take away the power of collecting revenue in order to protect the tenantry and so on. But no such thing has been said in the preamble and no attempt has been made before us to point out the special needs of the area in which these Ordinances of 1949 are in force, and which would justify their continuance in force after the 26th of January 1950, as compared to the other parts of the present State of Rajasthan. We have also not been able to see how it can be said that the Jagirdars of the area comprised by the former State of Rajasthan require to be dealt with in a different manner from the Jagirdars in the rest of Rajasthan. Under these circumstances, we are of opinion that these provisions of Ordinances Nos. X & XV of 1949 are hit by Article 14 of the Constitution of India, and, therefore, become void on the 26th of January, 1950, when that Constitution came into force. It has been urged that taking into account the fact that this State has been created by the integration of a number of States in which there were different laws on the same subject, there was bound to be inequality before the law between one part of the State and the other. We may, however, point out that the present State of Rajasthan has passed a number of Acts and Ordinances unifying the laws and a large number of central laws have been applied to Rajasthan, so that the field of legislation covered by laws of particular States has now diminished considerably. But, in any case, where such laws which deny to any person equality before the law or the equal protection of the laws come up for consideration, the matter whether the particular law is valid or otherwise would have to be decided in each case after taking into consideration the question whether their separate existence can be justified on the score of permissible classification based on real and substantial distinctions. In the present case, as we have already pointed out, we have been unable to find any real and substantial distinction why the Jagirdars in a particular area should continue to be treated with inequality as compared to the Jagirdars in another area of Rajasthan. We are, therefore, of opinion that that Section 8A, which was introduced in Ordinance No. XXVII of 1948 by Section 4 of Ordinance No. X of 1949, and the amendment to Section 8A by Section 3 of Ordinance No. XV of 1949 have now become void under Article 13(1) of the Constitution of India read with Article 14.

41. The petition is, therefore, allowed, and the opposite party is prohibited from collecting the rent from the tenants of lands comprising the Jagir of Bedla held by the petitioner. The opposite party shall pay costs of this petition to the petitioner which are assessed at Rs. 80/- per day occupied in arguments.