

(1954) 09 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 13 of 1953

Mast Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 24-09-1954

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 31(1)

Citation : AIR 1954 HP 84

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : Tek Chand Dhitkara, for the Appellant; B. Sita Ram, Government Advocate for Nos. 1 to 3 and M.L. Aukta, for Nos. 4 to 7, for the Respondent

Judgement

Ramabhadran, J.C.

1. This is a petition under Article 226 of the Constitution, wherein I am requested to issue a writ against respondents 1 to 3 (State of Himachal Pradesh, Financial Commissioner, Hima-chal Pradesh, and the Deputy Commissioner, Mahasu), restraining them from taking any action against the petitioner in pursuance of two orders passed by Mr. E. P. Moon, Chief Commissioner and Financial Commissioner of Himachal Pradesh, on 30-8-1950.

2. The petition arises under the following circumstances: On 25-3-1948, Raja Digvijai Chandra, ruler of Jubbal State, granted 11 bighas and 5 biswas of land situate in village Kumra and 5 bighas and 19 biswas of land in Bijar Barhal to the petitioner on payment of "Nazrana". Mutation was, accordingly, ordered in his favour. Gulabu, Shuru and Kahna Singh, respondents 4, 5 and 6, submitted objections to the ruler of Jubbal, protesting against these grants, but those objections were rejected by the ruler. Jubbal State was merged into the Himachal Pradesh on 15-4-1948. A petition, by way of review, was made to the Financial Commissioner, Himachal Pradesh, by Gulabu, Shuru and Kahna Singh, wherein they requested the Financial Commissioner to review and set aside the grants made by the ruler of Jubbal in favour of the petitioner on 25-3-1948. The

"review" petition was rejected by the Financial Commissioner on 6-3-1950. Further applications in the nature of review petitions were submitted to the Financial Commissioner by Gulabu, Shuru and Kahna Singh. On 30-8-1950, Mr. Moon, in his capacity as Chief Commissioner and Financial Commissioner, Himachal Pradesh, passed orders granting review and setting aside the grants made by the ruler of Jubbal on 25-3-1948 in favour of the petitioner. It is against this order that the petition has been filed.

3. It was contended on behalf of the petitioner that, in pursuance of the grants made in his favour by the ruler of Jubbal on 25-3-1948, the ownership of the lands passed to him and he could not be deprived of the same, save under authority of law. Reliance has been placed on Article 31(1) of the Constitution. Hence, this prayer for the issue of a writ against respondents 1 to 3.

4. The petition is opposed by the respondents. In the first place, it is contended that the petitioner is guilty of laches and, secondly, it is not maintainable because it is open to the petitioner to seek his remedy by suit. On merits, it was contended that the grants were made by the ruler of Jubbal on the eve of merger and, consequently, it was not binding on the Government of Himachal Pradesh, unless it was recognized by it.

5. I have heard learned counsel for the parties. As far as the question of laches is concerned, the petitioner has filed an affidavit explaining the delay in filing the writ petition. "Inter alia", it is stated in the affidavit that the petitioner was a Government servant and, consequently, he could not dare to challenge an order passed by Mr. Moon in his capacity as Chief Commissioner. This, in my opinion, is not a very convincing reason, because a Government servant is not debarred from seeking the protection of law Courts. The next ground given by the petitioner, however, is not without substance. After Mr. Moon left Himachal Pradesh, the petitioner made representations to the Lieutenant-Governor, Himachal Pradesh, against Mr. Moon's order. It was only in December, 1952, that the petitioner was informed, with reference to the land situated in village Kumra, that he could seek his remedy in a law Court, if so advised. As regards his representation, pertaining to land situate in village Bijar Barhal, it was only in March, 1953, that the petitioner got a similar reply from the Assistant Secretary (Home and Revenue Department), Himachal Pradesh. The replies, in original, are on the record. The petition was filed on 4-9-1953. Considering these circumstances, it cannot be said that the petitioner is guilty of undue delay.

6. As regards the maintainability of the writ petition, it was urged on behalf of the respondents that the petitioner could seek his remedy by suit. Learned counsel for the petitioner, on the other hand, pointed out that, where fundamental rights are infringed by executive action, the only proper course open to the petitioner was to file a petition under Article 226. My attention was, in this connection, drawn to a decision of my learned predecessor, reported in--"Shiv Dutt v. State of Himachal Pradesh" AIR 1953 Him 95 (A), where he observed that:

"The mere fact of the petitioners having given notices u/s 80, Ciyil P. C., does not mean that they had chosen the remedy of filing a suit, or, if they had chosen that remedy, that they were thereby estopped from filing the petitions under Article 226 of the Constitution, if they were otherwise entitled so to do. Hence where there was no enactment whereunder the petitioners could have pursued their remedy and the infringement of a fundamental right being their grievance the only proper course for them was to file petitions under Article 226."

My attention was also invited to-- Chairman, Budge Budge Municipality Vs. Mongru Mia and Others, where a Special Bench of that High Court pointed out that:

"The existence of alternative remedy is not an absolute bar against an application for writ or order under Article 226."

Whether the order of the Financial Commissioner, dated 30-8-1950, infringes the fundamental rights of the petitioner would be considered while dealing with the merits of this case. A perusal of the order dated 30-8-1950 shows, "prima facie", that the grants were not set aside in pursuance of any legal enactment but in Mr. Moon's capacity as Chief Commissioner. Whether such an order could be supported will be discussed shortly. Suffice it to say at this stage, "prima facie", the petition is not barred.

7. That brings me to the merits of the case. It is not disputed that the grants in favour of the petitioner were made by the ruler of Jubbal prior to the merger of the State into Himachal Pradesh, i.e. at a time when the ruler was fully autonomous and sovereign, except in matter's relating to defence, external affairs and communications, which had been transferred to the Dominion of India, soon after the passing of the Indian Independence Act, 1947. In the written statement of respondent 1, one of the grounds taken is that no grant made by the ruler of Jubbal would hold good, unless it was recognized by the Central Government. No legal authority for this proposition was, however, produced by the learned Government Advocate.

To go back to Mr. Moon's order dated 30-8-1950, it is significant that in granting the "review" and setting aside the grants made by the ruler of Jubbal in favour of the petitioner, no attempt was made to justify the review on the ground that the grants made by the ruler had not been recognized by the Central Government. On the other hand, in the case of Gulabu and Shuru, the grounds on which review was granted were, firstly, that they had been in possession for a long time and the Raja Sahib himself felt that their case merited reconsideration. In the second place, Mr. Moon pointed out that Gulabu and Shuru were not so well off as Mast Ram, who held a good position in Government service. On Kahna's review petition, Mr. Moon remarked that he was far less well off than Mast Ram and it would not be proper for Government to pass its rights to Mast Ram, who may proceed to eject Kahna Singh, without any regard to his previous position or his straitened circumstances. Learned counsel for the petitioner pointed out that

the first review petition was rejected by the Financial Commissioner on 6-3-1950.

8. The facts of this case are similar to those of--" Virendra Singh and Others Vs. The State of Uttar Pradesh, There, the facts were that the rulers of Charkari and Sarila made certain grants in favour of Virendra Singh and others on 5-1-1948 and 28-1-1948, respectively. On 13-3-1948, 35 States in that region, including Charkari and Sarila, agreed to unite themselves into one State, styled "United State of Vindhya Pradesh". The integration did not work satisfactorily. It was dissolved as from 1-1-1950, when the new State of Vindhya Pradesh came into being. It was to be administered by the Dominion Government as a Chief Commissioner's province. The villages, in which the lands granted by the rulers of Charkari and Sarila in favour of the petitioners were situated, were taken out of Vindhya Pradesh and absorbed into the Uttar Pradesh on 25-1-1950 by an order of the Governor-General.

On 29-8-1952, the U. P. Government revoked the grants made by the rulers of Sarila and Char-kari on 5-1-1948 and 28-1-1948. Virendra Singh and others filed a petition under Article 32 of the Constitution to the Supreme Court. I can do no better than to reproduce the observations of their Lordships of the Supreme Court, which run as follows:

"The absolute muafi grants of lands made by the Rulers of erstwhile States of Charkari and Sarila which were independent States under the para-mountcy of the British Crown, before the inte-gration of the States into United States of Vindhya Pradesh and their subsequent accession to the Indian Dominion, cannot be revoked as act of State, by the State (of Uttar Pradesh) in consultation with Government of India, after the coming into force of the Constitution."

"There cannot be nor there could be any confiscation of property, as an act of State in an area which was being administered by the Dominion Government in all respects as a Chief Commissioner's Province even if the person in possession was not, at the time, a national of the country."

"Similarly, when the properties (the lands which were the subject matter of the grant) became, two days later, i.e. on 25-1-1950, part of the Uttar Pradesh by virtue of Provinces and States (Absorption of Enclaves") Order, 1950, the lands could not be confiscated."

"In any case where the titles of the grantees to the disputed lands had not been repudiated up to 26-1-1950, these persons who were in de facto possession of the disputed lands, had rights in them which they could have enforced upto 26-1-1950 in the Dominion Courts against all persons (except possibly the rulers who granted them or the Dominion of India, which point was not decided by the Supreme Court)."

"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."

"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."

"It was not denied that if the present action of the State cannot be defended as an act of State it cannot be saved under any provision of law. Whether the State would have the right to set aside these grants in the ordinary Courts of the land, or whether it can deprive the petitioners of these properties by legislative process, is a matter on which we express no opinion."

"The action of the State of Uttar Pradesh in consultation with the Government of India, in revoking the grants by an order dated 29-8-1952 and depriving the grantees of their properties cannot therefore be defended as an act of State. Article 31(1) as also Article 32(2) is attracted and the grantees are entitled to a writ restraining the State of Uttar Pradesh from giving effect to the order and directing it to restore possession to the grantees, if possession has been taken."

9. The learned Government Advocate sought to distinguish the facts of this case from those of Virendra Singh's and others' case on the ground that the grants made by the ruler of Jubbal in favour of the petitioner were paper transactions and possession was, in fact, not settled to him. To this, learned counsel for the petitioner answered that the grants were followed by mutations in his favour. Copies of the mutation orders have been attached to the petition. If, as is alleged on behalf of the respondents, the grants in favour of the petitioner were only paper transactions, it is not clear why Mr. Moon, as Chief Commissioner and Financial Commissioner, deemed it necessary to pass orders setting aside the grants and directing that the "nazrana" paid by Mast Ram be refunded to him. It seems to me that whatever be the rights that passed to the petitioner by reason of the grants made to him by the ruler of Jubbal, he could not be deprived of them, by orders of the nature passed by Mr. Moon, on 30-8-1950. Articles 19(f) and 31(1) of the Constitution come into play. A writ will, accordingly, be issued to the respondents 1 to 3, restraining them from taking any action against the petitioner in pursuance of the orders passed by Mr. E. P. Moon, on 30-8-1950. In case any action has already been taken against the petitioner, then the status quo ante must be restored. This appears to be the first case of its kind in Himachal Pradesh. I would, therefore, leave parties to bear their respective costs.