
(1963) 09 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 39 and 40 of 1961

Mirza Majaf Ali Khan and Another

APPELLANT

Vs

The Assistant Controller of Estate Duty, Hyderabad

RESPONDENT

Date of Decision : 13-09-1963

Acts Referred:

Estate Duty Act, 1953 — Section 2(16), 3(1), 5, 6
Hyderabad Solar Jung Estate (Administration) Regulation, 1358 — Section 3A, 4

Citation : AIR 1964 AP 332 : (1964) 52 ITR 16

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : O. Chinnappa Reddy, V.S. Ramachandra Rao and K. Kolanda Reddy,
for the Appellant; C. Kondaiah, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—These two appeals are from the common judgment of our learned brother, Jaganmohan Reddy J., in W. P Nos. 836 and 837 of 1960 respectively, the former for the issue of a writ of prohibition and the latter for a writ of certiorari, both aimed against a notice by the Asst. Controller of Estate Duty to the appellants for payment of estate duty on the estate of the late Nawab Salar Jung (Salar Jung III) (hereinafter referred to as the late Nawab), which devolved on the appellants.

2. A brief resume of the facts will be helpful in understanding the respective contentions of the parties in this enquiry. Salar Jung III died on 2-3-1949 issueless, leaving behind him a vast estate consisting of valuable moveables and Immovable properties. Immediately, numerous persons began to assert their rights in these properties, claiming to be his heirs. Having regard to the scramble for succession, the Military Governor of Hyderabad, in exercise of the powers conferred upon him by H. E. H. the Nizam, promulgated a Regulation called the Salar Jung Estate (Administration) Regulation No. XXXIV of 1358 F. (hereinafter will be referred to as the Regulation for the sake of brevity). This Regulation

received the assent of H. E. H. the Nizam on the 25th Jama-di-us-Sani, 1368 Hijri -- 25th Khurdad 135SF.

3. Pursuant to this Regulation, the Government appointed a Committee called the Salar Jung Estate Committee (hereinafter will be called the Committee) to administer the estate of the late Nawab. We will presently refer to the relevant terms of the Regulation as they play a leading role in the context of the present enquiry. Suffice it to say here that this Committee functioned till 20-5-1959. when it was dissolved on a notification issued by the present Government.

4. Shortly after the establishment of the Committee the Nizam issued a firman appointing two Judges of the erstwhile Hyderabad High Court to hold an enquiry regarding "the Warasat and other matters pertaining to late Nawab Salar Jung". They were required to enquire into and report on the following questions:

1. Whether the Jagir of Salar Jung escheated to Government?
2. If not. who are the heirs of Salar Jung according to the Sanads or otherwise?
3. Who are Salar Jung's heirs to his private property and what are their respective shares?
4. What should be deemed to be the private property of Salar Jung which can be distributed amongst his heirs?
5. Whether the late Nawab has left any will and, if so, what effect thereof on the questions mentioned above?

5. The Military Governor directed the submission of the report of enquiry before 15-7-1949.

6. This firman was assailed by one Tahera Begum, who claimed to be one of the heirs of the late Nawab, mainly on the ground that it violated Article 14 of the Constitution.

7. A Full Bench of the erstwhile Hyderabad High Court in Tahira Begum v. The State of Hyderabad ILR (1953) Hyd. 1 : (AIR 1953 Hyd 105) upheld the contention of the invalidity of the firman, being of the opinion that it contravened the equality clause embedded in Article 14 of the Constitution. It may be mentioned here that the Regulation also came incidentally under challenge as being in conflict with the rights guaranteed under Article 19 of the Constitution. But this objection was overruled by the Full Bench in the view that it did not in any way infringe the principle of Art. 19 as the Regulation was enacted primarily for the preservation of the estate of the late Nawab by administering and managing it properly pending the determination of his heirs.

8. It is worthy of note that as the late Nawab left assets also in places not amenable to the jurisdiction of H. E. H. the Nizam's Government, the Parliament of India passed a law called. "The Salar Jung Estate Administration of Assets Act (XXXVI of 1950)", which had the same object and purpose in its view as the

Regulation.

9. Now, to follow the fortunes of the persons alleged to be the heirs of the late Nawab, Tahira Begum, who questioned the validity of the firman, instituted a suit in the City Civil Court. Hyderabad, as the step-mother's daughter of the late Nawab, claiming a share in the estate. Before she could realise the fruits of the litigation and within a fortnight thereafter she died leaving a number of children. To this suit, were impleaded Syed Abdulla, father of the appellants, who was the maternal uncle of the late Nawab. Syed Abdulla died on 24-2-1954. On his death, the present appellants were brought on record as his legal representatives.

Subsequently, Syed Hasan Pasha 2nd appellant in W. A, No. 39 and W. A. No. 40 of 61 raised a suit claiming a share in the estate of the late Nawab. To this action, were impleaded seventeen persons as defendants including the Government of the Hyderabad State and the Union Government, Gradually, the number of defendants swelled to 110. There were other suits also filed by persons claiming to be the heirs of the late Nawab and all of them ultimately ended in a compromise. The compromise filed in C. S. No. 13 of 1958 (on the file of the Original Side of the High Court of Judicature at Andhra Pradesh, at, Hyderabad) was a comprehensive one in that it included the terms of the previous compromise also. The details of the terms of compromise need not detain us here, as nothing turns upon them in these appeals.

10. Meanwhile, the Parliament of India enacted the Estate Duty Act (XXXIV of 1953). In exercise of the powers conferred by Sections 53 and 55 of this Act, the Estate Duty Officer issued a notice to the Receiver, who was appointed under the compromise; referred to above for the purpose of the division of the assets of the late Nawab to furnish statements of account in respect of the estate of the late Syed Abdulla and seven others, who died between 1953 and 1960. The Receiver repudiated his liability to account as no property devolved upon the heirs of either Syed Abdulla or other deceased, since the latter had no interest in the estate of the late Nawab at the time of their death. As the Department did not accept his objection and threatened to complete the assessment, the writ petitions giving rise to these appeals were presented by the Receiver.

11. In the writ petitions, the attitude adopted by the Receiver was the same as disclosed in his reply to the Revenue. The learned Judge negatived the objection urged on behalf of the Receiver that there was no estate of Syed Abdulla and other persons to which his heirs succeeded and which became subject to the payment of estate duty. In the result, the writ petitions were dismissed. It is this judgment of our learned brother that is under appeal now.

12. Pending the writ petitions, the receiver was discharged, as the distribution of the assets was completed as per the terms of the compromise. The appellants, who are the heirs of Syed Abdulla, have come on record and they are prosecuting these appeals.

13. Before we deal with the contentions founded upon the Regulation, it is useful

to refer to the relevant provisions of the Estate Duty Act, which imposes the liability to pay the duty. Section 5 renders the estate of a person, who dies subsequent to the coming into operation of the Act, liable to pay a duty called "estate duty" upon the principal value to be ascertained as provided thereunder of ail property, settled or not settled, including agricultural land situated in the States specified in the First Schedule to the Act, and which passes on the death of such person, at the rates fixed in accordance with Section 35. Section 6 which has a material bearing, reads as follows.

"Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death",

We are mainly concerned with, this section, as it is the case of the Department that the deceased persons were competent to dispose of the properties that would be allotted to their shares at the time of their death.

14. We will now turn to Section 3 of the Act, which says:

"(1) For the purposes of this Act -- (a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of property;

15. The other clauses of the Sub-section do not have much of a bearing and, therefore, they need not be extracted here. Section 2, Clause (16) recites:

" "Property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation and "on the death" includes "at a period ascertainable only by reference to the death"."

16. This clause postulates that property is said to pass on the death even if it should pass after a long interval and even contingently. By reason of this clause, it is not only property that passes immediately on the death of a person that is exigible to estate duty but also property which passes after a lapse of some years and even contingently. This clause has an intimate bearing on the present enquiry having regard to the fact that in this case it was only after the death of Syed Abdulla that the heirs of the late Nawab became ascertained and the estate was distributed amongst them, excluding some properties which were taken by the Union Government and those, which formed the subject-matter of the Revenue enquiry.

17. In the light of the rules contained in the sections of the Estate Duty Act just now quoted, we have to consider whether any property passes on the death of Syed Abdulla and others to their heirs within the purview of sections 5 and 6 read in conjunction with sections 3(1) and 2(16) of this Act.

18. In support of these appeals, it is contended in behalf of the appellants that none of the deceased had any interest in the estate of the late Nawab which passed on to their heirs on his death for the reason that the whole of that estate

was vested in the Salar Jung Estate Committee and this had the effect of defeating the right title and interest of the alleged heirs in the estate of the late Nawab. This is the result, it is urged, of the Regulation and the action taken under the terms of the Regulation. The relevant provisions of the Regulation, which set out its scheme and which devise machinery for the proper administration and management of the estate, may be adverted to here.

19. Before we read the sections, we will do well to look at the preamble, which gives the purpose of the Regulation. It says:

"Whereas it is expedient to appoint a Committee to administer the estate of the late Salar Jung.;"

20. We will now proceed to quote the relevant sections (emitting the unnecessary portions):

Section 3 The Salar Jung Estate Committee shall, under the general control of the Govt. administer the estate of the late Salar Jung and in doing so shall have all the powers and duties of the Court of Wards under the Court of Wards Act, 1350F. Section 3-A, which was inserted by Regulation No. LXIV of 1358 F., runs as follows :

The estate of the late Salar Jung, including his personal property, shall vest in the Salar Jung Estate committee and the Committee shall have power to ----

(a) receive and give full and effectual discharge of rights and liabilities accrued or accruing in respect of the estate, including the personal property;

(b) sell, transfer, or otherwise dispose of or deal with the estate, including the personal property.

Section 4: No person, including heirs, if any, of the late Salar Jung, shall be entitled to the possession of the estate of the deceased so long as the estate is under the administration of the Salar Jung Estate Committee.

Section 5 provides for the duration of the administration of the estate by the Committee, while Section 6 casts an obligation of the Committee to render to Government an account of its administration. Section 8 empowers the Salar Jung Estate Committee to make rules with the sanction of the Government to carry out the purposes of the Regulation and in particular for the more convenient transaction of the business of the Committee and for the manner in which orders and other Instruments made and executed in the name of the Committee shall be authenticated.

21. What then is the effect of these provisions? Do they extinguish the right and title of the heirs of the late Nawab? Sri Chinnappa Reddy, learned counsel for the appellants, invites us to hold that this is the effect of Sections 3-A and 4. It is urged that as the whole of the estate was vested in the Committee and that no person including any heirs could claim possession of the estate so long as the estate was under the administration of the Committee, it resulted in defeasance

of their title to the property.

We are not persuaded that these sections would bear the consequence that is attributed to them. The idea that runs through all these sections appears to be, the preservation of the estate for the benefit of some one who might ultimately be entitled to take it. It may be that at the time when the Regulation was enacted the Nizam could dispose of the estate in any way he liked irrespective of the claims of persons he they his heirs or not. But, the rights and prerogatives of H. E. H. the Nizam as they existed at the relevant time are trot quite pertinent in the present context. It should be remembered that estate of the late Nawab on his death had devolved on his heirs, if any, or escheated to the Government if he had none. So, the position at the time the Regulation was enacted empowering the Government to constitute a Committee of manage the estate was that the estate had become vested either in the heirs or in the State Government by escheat if he had none. It may therefore, be legitimately assumed that the purpose of the Regulation was to administer and manage the estate for the benefit of those who ultimately would be entitled to the estate.

It is no doubt true that H. E. H. the Nizam, in exercise of his powers as the Sovereign Ruler, could confiscate the estate or could give directions for disposal of the properties in a way different from their devolution under the Shariat law. That H. E. H. the Nizam did not intend to depart from the rules of succession to the estate under the Mohammedan Law could Be gleaned from the fact that he had appointed a Commission for ascertainment of the heirs of the late Nawab. If really his intention was to dispose of the properties in a way different from the rules governing succession to the estate, it was not necessary for him to issue the firman referred to above. This discloses that the Regulation was conceived in the interest of the persons who night eventually become entitled to the assets of the late Nawab.

22. Is there, anything in the terms of Section 3-A or Section 4 which is inconsistent with this notion? In our opinion, there is none. The only result of Sections 3-A and 4 is to vest the legal estate in the Committee for an effective management and administration thereof. It is argued by the learned counsel for the appellants that, while incontestably the legal estate alone vested in the Committee and the beneficial interest did not vest in any one, full powers were conferred upon the Committee to deal with the properties in any way it liked and since there was none who could question either its acts or claim any interest in the properties so long as they were under the management and administration of the Committee, the heirs of Salar Jung could not be deemed to possess any beneficial interest in that estate.

23. We are unable to accede to this proposition. A perusal of Section 3 shows that the powers conferred and duties cast upon this Committee, were similar to those pertaining to Court of Wards under the Court of Wards Act, 1350 F. It Is true, as contended by the learned counsel for the appellants, that, unlike in. the case of the Court of Ward''s, the estate here vested in the Committee: That in

our opinion, does not make any material difference in construing the nature of the estate that vested in the Committee and the character of the rights of the persons who might finally be found entitled to the estate. We cannot overlook In this context the fact that the Committee had to render an account to the Government and it was also under the control of the Government, which clearly indicates that that it was only administering the estate for the benefit of someone, whoever he might be. That it was not for the benefit of the Nizam is seen from the circumstances narrated above. It could, therefore, be only for the benefit of persons other than the Nizam.

The estate that was vested in the Committee was circumscribed by the conditions indicated in the various sections. We have already stated that this was only a legal estate and that the beneficial estate inhered in some-one-else, it is in this context that we have to bear in mind the impact of the Constitution on the Regulation and the consequences that flow from its operation and the declaration by the Full Bench of the erstwhile Hyderabad High Court in ILR (1953) Hyd 1 : (AIR 1953 Hyd 105) (FB).

24. After the advent of the Constitution, the rights and prerogatives of H. E. H. the Nizam as a Sovereign Ruler had ceased to exist. It means that the Nizam could no longer take away the properties of the citizens of India or act inconsistent with the Fundamental Rights guaranteed to the Citizens in Chapter III of the Constitution. Property Rights are protected by Article 19, It follows that the rights of the heirs of the late Nawab, If any, to the estate were inviolable and the moment they established their rights they could claim distribution of the estate amongst themselves,

25. We may also here refer to Sections 3-A and 4 of the Regulation, which furnish a key to open the mind of the legislature. They clearly Indicate that the Committee was functioning only for the benefit of persons ultimately entitled to the estate. This Idea Is emphasised by Section 4, which shows that what the heirs, if any, were deprived of was only possession and enjoyment of the estate. It Is to be noted that it does not mention anything about the title to the estate. This section also stresses the thought that the Committee was constituted to manage the estate only for its preservation, so that it might eventually become available to the original heirs. There is no provision in the Regulation which acts as an impediment in the way of persons that might ultimately be found to be the heirs to recover the estate from the Committee,

26. Coming now to the Full Bench judgment of the erstwhile Hyderabad High Court in ILR (1953) Hyd. 1 : (AIR 1953 Hyd. 105) consequent upon the declaration that the firman was null and void as being opposed to Article 14 of the Constitution, the parties could invoke the Jurisdiction of the civil Courts to have Their claims settled. After the Full Bench decision, the parties could have recourse to civil Courts and, in fact, they did resort to civil Courts and thereafter the Committee could hold the estate only for the benefit of those that would succeed in the litigation, be they the near relations of the late Nawab or the stale

Government if none of them are declared as the lawful heirs. In this state of affairs, it is difficult to predicate that Syed Abdulla or persons similarly situated had no interest in the estate of the late Nawab which could be termed as an "estate" within the meaning of Sections 5 and 6 of the Estate Duty Act, 1953 and which could be said to have passed on to their heirs at their death.

27. We will now turn to the decisions cited by the learned counsel for the appellants which, according to him, establish the proposition that when once the estate had vested in a person or a Committee like the Salar Jung Estate Committee, the rights of the heirs were extinguished and would revive only when the Sovereign should think of restoring them to the heirs. Till then, the heirs had no beneficial ownership much less legal ownership in the estate, proceeds the learned counsel.

28. The first of the cases to which our attention has been drawn is *In Re Munster*, (1920) 1 Ch. 268. The facts of that case are these. There, one Alexander Prince Munster of Derneberg was an enemy within the Trading with the Enemy Amendment Act, 1914. At the outbreak of World War--I, this prince was the owner of a large estate in Sussex known as the Maresfield estate, besides being the owner of various shares and securities in British Companies. Some time after the outbreak of the war, by an order dated 10th May 1915, the Maresfield estate was vested in the Public Trustee as custodian, "for all the estate and interest therein then vested in Prince Munster." By another order of July 4, 1916, the shares and securities were similarly vested in the custodian. Two years thereafter, the Special Commissioners of Income Tax required the Public Trustee to make returns for super-tax for four years as agent or receiver for Prince Munster. The Custodian contested his liability to submit the returns on the ground that he was not liable to do so. Notwithstanding this, the Special Commissioner assessed him to super-tax for each of the four years in question as agent or receiver for Prince Munster and notices of assessment were served upon the Public Trustee. The latter disputed the legality of the assessments and the amounts at which the assessments were made.

The question that arose before Russell, J., who heard the summons asking for directions was whether the Custodian acted as the agent or the receiver for Prince Munster and whether he was liable to pay super-tax in that capacity. The learned Judge answered the question in the negative. He, however, ruled that the custodian could be made to pay the Commissioners of Inland Revenue such sum as may be agreed between them as the amount of super-tax, in the exercise of the discretion vested in him by Sub-section 1 of Section 5 of the Act of 1914. The learned Judge observed:

"It is clear that a sum equal to the amount of super-tax for the four years in question which Prince Munster but for the war, would have been liable to pay in respect of these profits and gains ought to be paid to the Commissioners of Inland Revenue, because, in my view, Prince Munster could never properly ask to receive back the property except upon the footing that this sum is paid."

29. The learned counsel for the appellants relies upon certain passages in the judgment of Russell J., which, according to him, supports the view which he pressed upon us. The learned Judge remarked at p. 277 of the report;

"Subject to the widest possible discretion vested in the Board of Trade or the Court, and subject to that provisions of Sub-s. 2, the custodian is bound to hold the property vested in him under the Act, until the termination of the war; and after the termination of the war he is bound to deal with the property in such manner as. His Majesty may by Order in Council direct."

"The Phraseology used In the preamble and In Section 5 establishes in my judgment that pending its disposition by Order in Council after the determination of the war, the property is removed from the control and from the beneficial ownership of the enemy. At the termination of the war fresh considerations will arise; and whether the enemy will recover, and to what extent he will recover, the beneficial ownership will depend upon the arrangements made at the conclusion of Peace (referred to in the preamble) and upon the terms of any Order in Council, made, I doubt not, with those arrangements in view, u/s 5".

30. Stress is laid especially upon the latter part of the observations, namely, "property is removed from the control and from the beneficial ownership of the enemy", But a careful examination of the passages would reveal that the removal of property from the control and from that beneficial ownership of the enemy was only for the duration of the war and not permanently. The extinction of the rights, even if any, was only temporary and the alien was not permanently deprived of his property. He could make no claim to have the property delivered to him only until the termination of war and restoration of peace. His rights to property were not extinguished.

31. That this is so clearly appears from the passages extracted by the learned Judge from the Judgment of Lord Finlay L. C. in *Hugh Stevenson and Sons v. Akt. Fur Carlonnagen Industries* (1918) AC 239 at pp. 244, 247. Lord Finlay L C. remarked:

"It is not the law of this country that the property of enemy subjects is confiscated. Until the restoration of peace, the enemy can, of course, make no claim to have it delivered up to him, but when peace is restored he is considered as entitled to his property with any fruits which it may have borne in the meantime."

32. It is thus clear that the alien was not only entitled to the corpus but also the accretions therefrom when finally he was given back his property.

33. To the same effect is the law stated by Lord Haldane in the same judgment:

"The law of this country does not In general confiscate the property of an enemy. He cannot claim to receive) it during war, but his right to his property is not extinguished; it is merely suspended."

34. Russell J. stated that these passages no doubt accurately stated the law of the country apart from the provisions of any statute or of the treaty of peace.

35. Coming now to the remarks of Lord Parker in *Daimler Co. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.* (1916) 2 AC 307 at p. 347, they are in consonance with the principle enunciated in the speeches of Lord Finlay L. C. and Lord Haldane.

36. The learned Judge after referring to these passages, categorically stated that the enemy was only deprived of beneficial ownership during the war and the custodian after the termination of the war was bound to deal with it in such manner as His Majesty (keeping no doubt in view of the arrangements made at the conclusion of peace) may by Order in Council direct. Down below, he makes it abundantly clear that the beneficial ownership remained in statutory suspense or abeyance. It was in that context that it was held that the custodian had not received these profits and gains and did not hold them in any sense as an agent or receiver or trustee for Prince Munster.

37. What follows from this decision is that during the time the property was with the Public Trustee, the rights of the enemy were suspended. He could not claim to be restored to possession of the property and he could not deal with it during that period.

38. The principle of this decision, if applied to the present case, would, far from advancing the position of the appellants, furnish an effective answer to their contention. It establishes that the beneficial ownership in the persons that would ultimately be found to be the heirs and after the cessation of the period during which they could not claim to be restored to it, the property reverts to them unlike in the situation arising under the Trading with the Enemy Amendment Act, 1914, which required the Public Trustee to deal with the property in such manner as His Majesty might by order direct. In the present case, as a result of the Constitution, the persons that are found to be the heirs could claim possession of the property as soon as their heirship was established. As already observed, this decision fortifies the view we have already taken and it does not in any way help the appellants.

39. Our attention was next drawn to the judgment of the House of Lords in *Bank Voor Handel En Scheepvaart v. Administrator of Hungarian Property*, (1954) 2 WR 867. The House of Lords approved of the dicta of Russell J. in (1920) 1 Ch 268. Lord Morton of Henryton subscribed to the same view as was taken in (1920) 1 Ch 268. Says the learned Law Lord at p. 875 of the report:

"The conception of beneficial rights being "in suspense" is no doubt at first sight somewhat strange and "novel" but I accept, as he did, the reasoning of Russell J. in (1920) 1 Ch 268, and I think it is equally applicable to the legislation now under consideration."

He emphasises the conception of beneficial rights being suspended in the

subsequent parts of the judgment.

40. Similarly, Lord Asquith of Bishop stone also approved of the decision of Russell J. in (1920) 1 Ch. 263. He observed:

"When such property vests in him it ceases thereupon beneficially to belong to its original owners; and though in pursuance of "arrangements to be made at the conclusion of peace" (Section 7(1) of the 1939 Act), viz., in pursuance of treaties of peace to negotiated by the Crown, the Crown could recreate a title in the original owners it could, in my view, equally create such a title in anyone else, including itself. The "statutory suspension" of title referred to by Lord Russell of Killowen seems to me in its context to point not to the persistence throughout of a temporarily submerged title, But to the extinction of that title, subject to the possibility of its rebirth."

The latter observations, viz., "extinction of that title" should be understood in the context of the other observations, which are synonymous With the exclusion of the property from, the beneficial ownership of the person entitled to it, during war as laid down by Russell J., and also by Lord Morton of Henryton and the earlier observations made by Lord Asquith himself.

41. As already pointed out, this decision was relied upon by the learned counsel for the appellants only as approving and adopting the principle enunciated by Russell, J. in (1930) 1 Ch 268 . We do not, think that tills pronouncement of the House of Lords is of any assistance to the appellants.

42. The learned counsel then cited to us Clifton v. Strauss, 1927 1 Ch 313 relied on by cur learned brother in support of his conclusion that the vesting of the estate in the Committee did not in any way defeat or destroy the rights of the ultimate beneficiaries. We agree with the learned counsel that Eve J., who dealt with the cited case, was net concerned with the effect of the vesting of the properties of the alien in the Public Trustee but was mainly concerned with the question as to the location of the shares owned by the enemy at the time of the outbreak of the war.

43. In that case, the testator, a German subject, was, at the outbreak of war, entitled to stocks, shares and securities in English, South African and American Companies which had been purchased for him by German banks acting through their London Agencies. The certificates were in all cases situate in London and the securities themselves were transferable in London at the outbreak of war and at the date of the testator's death. The testator died after the outbreak of war. In that situation, Eve J. held that since all the shares were locally situate in England, the administrator was bound to include them as property of which the testator was competent to dispose and was accountable to the extent of the assets he had received for the estate duty in respect thereof, u/s 6, Sub-section 2, of the Finance Act, 1894, and that the fact that the testator's power of disposing of the shares and effecting any transfer of them was temporarily suspended could not operate to change the location of the particular shares held

by alien enemies. So we do not derive much help from this judgment.

However, that does not make any difference since we have already stated that despite the actual vesting of the estate in the Committee, the rights of the heirs were not destroyed but they were only statutorily suspended and they could claim to be restored to possession immediately after the dissolution of the Committee. It may be mentioned here that the moment the disputes relating to succession were settled under the compromise decree, the Committee was dissolved, thereby indicating that the Committee's administration was only pending ascertainment of the heirs and for the benefit of the ultimate heirs. The fact that the heirs of the late Nawab including Syed Abdullah and seven others whose heirs are now called upon to pay the estate duty could not deal with the properties or enjoy them during a particular period, would not make any difference for the operation of Sections 5 and 6 of the Estate Duty Act, 1953. Notwithstanding this disability, they must still be held to be having an interest in the properties of the late Nawab which on their death passed on to their heirs which became subject to payment of estate duty.

44. For all these reasons, we hold that the Department could validly assess the estate for the purpose of Estate Duty and the judgment of our learned brother which upheld the right of the Department to do so, cannot be successfully impeached.

45. In the result, the appeals are dismissed with costs in W. A. No. 39 of 1961. Advocate's fee Rs. 250/- (Two hundred and fifty.)

46. C. M. P. Nos. 8041 and 8042 of 1963 are ordered.