(1955) 09 AP CK 0017

In the Andhra Pradesh High Court

Case No : Appeal No. 153/1 of 1952-53

Mohd. Mumtazuddin Khan — APPELLANT

Vs

Fatima Begum — RESPONDENT

Date of Decision : 30-09-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 2, Order 47 Rule 4, Order 47 Rule 4(2), Order 47 Rule 8, 5
Constitution of India, 1950 — Article 14, 154, 226, 264, 295
Hyderabad (Abolition of Jagirs) Regulations, 1358 — Section 21
Hyderabad Atiyat Inquiries Act, 1952 — Section 13
Hyderabad Land Revenue Act, 1317 — Section 147, 148, 160(7), 163, 166

Citation : (1955) 09 AP CK 0017

Hon'ble Judges : Srinivasa Chari, J;Siadat Ali Khan, J

Bench : Division Bench

Advocate : Sadashivrao, for the Appellant; V.K. Vaidya, for the Respondent

Judgement

Siadat Ali Khan, J.—This is first appeal No. 123/1/1952. We have heard at length the arguments of the learned advocates of the parties.

2. This case is full of vicissitudes and has a long and chequered history. A Jagirdar Amir Jung, Amir-ud-Dowla, died in 1236 A.H./1845 A.D, His jagir was granted to his three sons by three separate ''Muntakibs'' or grants in 1301 to 1304F. while his daughter Mahboob Begum did not get any share or guzarah as she did not put up any appearance in the succession proceedings. Many years later and after her death, her daughter Rahatunnissa Begum applied in 1325F/1915AD for her mother''s share.

The Atiyat Department directed her to get her right to succession decided by a Court of law. Accordingly she filed a suit in the Dar-ul-Kaza and got a declaratory decree that she was the granddaughter of Amir-ud-Dowla and entitled to a share. She, however, died soon after this, but her daughter, Fatima Begum applied to the Atiyat Department Cor a share. On 27-3-1350F. the Nazim- e-Atiyat directed that she should be given from each of the four Muntakibs of her mother''s uncles a guzarah of Rs. 50/- per month.

On appeal Mr. Crofton the Revenue Member reversed the judgment of the Nazim-e-Atiyat on 17-7-1350 F. Fatima Begum applied to the Board of Revenue for a review of this judgment which allowed it on 14-12-1354F. A revision of the Board''s judgment was sought. Mr. Savidge, the then D. G. R. allowed the revision petition and thereby set aside the Board''s judgment and restored Mr. Crofton''s judgment of 17-7-1350 F.

A review of Mr. Savidge''s judgment was then prayed for by Fatima Begum. The review was admitted by the senior Member of the Board on 19-4-1357 F; and was heard and decided by the Revenue Minister Mr. B. Ramkrishna Rao, (as he then was). He allowed the review petition with the result that the Board of Revenue judgment of 14-12-1354F by which Fatima Begum was given the above-mentioned guzarah was restored.

The Chief Minister of the time Mr. M.K. Vellodi, confirmed this judgment on 6 5-1951. Thereupon the defeated party filed a declaratory suit in the City Civil Court praying for a revision of the judgment of the Revenue Minister and the order of the Chief Minister. This suit was dismissed on 19-12-1952 A. D. Hence this first appeal.

3. u/s 9, Civil Procedure Code., the civil Courts have jurisdiction to look into the correctness of the decisions of all other Courts when the subject-matter of a suit is of a civil nature. As laid down by their Lordships of the Privy Council in Secy, of State v. Jatindra Nath AIR 1924 PC 175 (A), fundamental irregularities, that is to say, defiance of or, non-compliance with the essentials of the procedure gives ground for questioning a proceeding in a Court of law.

The judgment of the Revenue Minister dated 17-4-1951 is being questioned on this very ground of fundamental irregularities. It is contended that essentials of procedure have been ignored in the following matters:

(a) It was argued that Mr. Savidge''s judgment of 1-5-56F was a review of the Board''s judgment of 14th Aban 1354 F and the Revenue Minister (as he then was), heard a review of this review, which is allowed neither by the Code of Civil Procedure, nor even by the Revenue Code itself.

(b) It was argued also that the provisions of Order 47 Rule 2 that a review should be heard by the same Judge who passed the order under review were also not observed, nor,

(c) the provisions of Order 47 Rule 4 that a review can be granted only on the grounds mentioned in that rule were followed and the review was allowed on extraneous and insufficient grounds, and that in addition to these irregularities there is,

(d) lack of jurisdiction also in the sanctioning authority. This is so because before the advent of the Constitution of India the Jagirs were granted by H.E.H. the

Nizam under his prerogative rights, and these rights were brought to an end by the Constitution, and, therefore, the Chief Minister could not have varied the grant by giving a guzarah to the Respondent Fatima Begum as he had no prerogative rights.

4. We carefully considered the above contentions. The first contention that Mr. Savidge''s judgment of 1st Farwardi 1356F was in review of the Board of Revenue''s judgment of 14th Aban 1354 F was given up by the learned advocate for the Appellants and he conceded that it was passed in revision. Paragraph (8) of the office order No. 24 dated 25th Thir 1354 F provides for a revision of a judgment passed in review and it is clear that Mr. Savidge as D. G. R. was fully competent to hear the revision.

The learned advocate, however, maintained that the review filed against Mr. Savidge''s judgment in revision was admitted by Shri Gaus Mohiuddin, the senior member of the Board of Revenue, and this contravened (a) the provisions of para 7 of the self same office order No. 24 referred to above and (b) the provisions of Order 47 Rule 2, Civil Procedure Code.

Taking (a) first, no doubt para 7 provides that the decision to admit review from the judgments in revision of the Board will be taken by the D.G.R. alone, in his capacity of D.G.R. and the senior member of the Board". It should, however, be noted that H.E.H. the Nizam after sanctioning the creation of a Board of Revenue by this office order No. 24 on 25th Thir 1354 F promulgated later on two other office orders, one of them being the office order No. 29 dated 18th Bahaman 1357 F, and this was when the office of D.G.R. was abolished.

It provides that in the office order No. 24 of 25th Thir 1354 F for the words "by the D.G.R. alone in his capacity of D.G.R. and the senior member of the Board" the words "senior member of the Board alone" should be substituted. It is admitted that Shri Gaus Mohiuddin was the senior member when he admitted the review against Mr. Savidge''s judgment on 19-4-1357 and directed that notice to the other side should issue. Thus admission of the review by him was within his powers and the contention of the learned advocate from the said para 7 is not correct.

5. Coming to the contention at serial (b) above, as already stated, the learned advocate argued that according to the provisions of Order 47, Rule 2, Mr. Savidge alone could have admitted the review and Mr. Gaus Mohiuddin could not have done so.

6. To decide this contention, it will be necessary to decide first whether in the matter of reviews, CPC . applies to the Revenue Courts. It was contended that Section 5, CPC clearly applies the CPC to the Revenue Court. A perusal of the section will, however, show that, CPC applies to the Revenue Courts only when any special enactment applicable to them is silent. This has been held by their Lordships of the Privy Council also in Nilmoni Singh Deo v. Taranath Mookherjee 9 Cal 295(PC) (B).

The case reported at Chaitan Patgosi v. Kunja Behari 38 Cal 832(C), collects all the cases on the application of the CPC to the Revenue Courts, and the position that emerges is the same as is mentioned above viz., that the Code of Civil Procedure, applies only when the rent i.e. Revenue Acts are silent and if the CPC is to be excluded further, the Government should notify in the Government Gazette the subjects Which it desires to be excluded.

Considering this provision and the authorities cited above, it appears to us that as in Section 166 of Land Revenue Act No. 8 of 1317F there are specific provisions regarding the hearing of reviews by the Revenue Courts this provision, and not Order 47 will apply. The learned advocate, however, took a further distinction and argued that a perusal of the land Revenue Act will show that it is restricted to the subject of land revenue only and not to grants; that there are other provisions which alone apply to the subject of grants and these are Circular No. 10 of 1338F and the office orders Nos. 24 of 1354 F. and 29 of 1357 F.

Hence, he argued that as the Land Revenue Act could not possibly apply to jagir grants Section 163 of that Act will not apply. But he cited no authorities to substantiate that the Land Revenue Act of 1317 F will not apply to the jagir grants. Admittedly, the Act is on the subject of land revenue and the jagir grants also are usually of land revenue and, therefore, there appears to be no reason why it should not be held that the Land Revenue Act of 1317F does apply to the jagir grants.

Again, there are specific provisions regarding reviews in the other circulars and orders which the learned advocate himself maintains to be peculiar to the jagir grants. We have already dealt with the office orders Nos. 24 and 29 in the preceding paragraph. There remains circular No. 10 of 1338 F. Section 7 of this circular which specifically deals with the subject of grants, provides that regarding review and revision the CPC will apply "as far as possible". These words suggest that CPC does not apply pro tanto, and that it applies only where the laws of the Revenue Department are silent.

The learned advocate, however, argued that the words ""as far as possible" are enabling words like the word "may" and they should be construed, as stated in Craies on Statutes at page 264, to be obligatory on the ground that enabling words are compulsory whenever the object of the word is to effectuate a legal right. Assuming without holding that the contention is correct, still when definite provisions like the Office Orders Nos. 24 and 29 and Section 166 make specific provisions on the subject of review, evidently they will have to be given effect to.

We have already seen above that office order No. 29 enables the senior member to admit review and also that there is no reason to exclude Section 166, Land Revenue Act. Under these provisions it seems sufficiently clear that a review can be heard by a successor of the Judge who passed the order under review. Section 166 cols. (7) & (8) specifically provide that a review can be heard by a successor.

Thus, for the above reasons, we see no force in this contention and are of the opinion that on the abolition of the post of the D.G.R. the admission of the revision by the senior Member of the Board of Revenue and its decision by the Revenue Minister was fully allowed by the Revenue Laws and Section 5 CPC does not stand in the way.

7. As a last resort the learned advocate for the Appellants argued that Shri Gaus Mohiuddin admitted the review without notice to the Appellants and he cited many authorities to show that failure to give notice is fatal. It should be noted that notice is also prescribed by Section 166(2) (b) as it is provided by Order 47 Rule 4, sub-rule. (2), proviso (a). Hence, the question is whether there is here a fundamental irregularity. I do not think so.

What Gaus Mohiuddin did on 19-4-1357F was simply to admit the review petition and not to grant it. Had he granted it he would have set aside Mr. Savidge''s judgment which was the judgment under review. He did not set it aside. In fact he heard it in the first ex parte stage. Of the three stages of the review the first is ex parte. In it an ex parte petition is rejected at once or a rule granted upon the other to show cause; here he granted the rule (and not the review) and directed notice to be issued to the other side. Hence, it is incorrect to state that he granted the review without notice.

8. This brings us to the third contention of the learned advocate that the provisions of Order 47, Rule 4, were not observed and that the review was granted on insufficient grounds. We carefully considered whether this contention is correct. Mr. Savidge when he had heard the revision from the judgment of the Board of Revenue, which had set aside the judgment of Mr. Crofton, had held that merely coming to a different conclusion on the same facts did not fall within the meaning of a review.

We do not dispute the legal side of this opinion. But as to its factual side the question is whether there was any error apparent on the face of the record. Mr. Crofton in his judgment has stated on page 33, line 20, that the mother of the Respondent, Rahatunnissa Begum, was not directed to go to the civil Court at all, to establish her claim against the jagirs. This is entirely against the record for page 59 of the printed paper book will show that the Revenue Minister of the time, Raja Murlidhar, directed on 5th Khurdad 1327 F that:

the Appellants should be asked as to why they do not pay Rahatunnissa Begum a guzarah if she has a right to i(sic) and that if they settle the matter amicably it will be better; otherwise, Rahatunnissa Begum should be asked to show whether a share or a guzarah was granted to her, or, to her mother, and if this is proved it should be directed to be paid in future also, if not, Rahatunnissa should be directed to go to the civil Courts.

In pursuance of this order the Assistant Nazim, Atiyat, heard arguments and on 23th Isfandar 1331F held that as the Appellants refused to pay any guzarah because they did not admit her claim, the only course left was to direct her to go and establish her right in a civil Court which she herself wants to do and where according to her pleader she will establish her descent, her legitimacy and also her share. On this, the Nazim Atiyat directed on 3-5-1331F that she should be so allowed.

The Revenue Minister confirmed this directive on 14th Farwardi 1331F and it also received the endorsement of the Prime Minister on 18th Ardibehist 1331F. All this will show that she went to the law Court on the directive of the Atiyat Court and Mr. Crofton was not correct in holding that she went to the civil Court of her own accord and was not directed by the Atiyat Department.

Again as referred to by Mr. Crofton himself '' on pages 36 and 37 of the printed paper book there is the resolution No. 2 of 1303 F. and the circular No. 35 of 1306 F which provide that if after the "inam decision" a party obtains a declaratory decree of the civil Court for its share, the muntakib ; will be altered accordingly and, that if the party is directed by the Government to go and establish its claim and obtain a decree declaring its right, then that decree will be executed by the Atiyat.

Considering these orders Mr. Crofton wrote that the civil Court did not give any decree regarding her rights and had not affirmed in anyway that she is entitled to her guzarah and only stated that she is the grand-daughter of Amir-ud-Dowla. The judgment of the Darul Kazah Court is printed from page 71 of the printed Paper Book and it is expressly held therein that:

Rahatunnissa Begum has been proved to be the grand-daughter of Amir-ud-Dowla and it is admitted that her mother, Mahboob Begum, died after Amir-ud-Dowla; hence Mahboob Begum was the legal heir to Amir-ud-Dowla and Rahatunnissa Begum, her daughter, is a heir to her and that if this had been a suit for private property the Plaintiff would have been entitled to a share, but, as it relates to Crown grants, the granting of a hissa pertains to that Department and Darul Kazah Cour cannot pass any order in this regard.

In the face of this finding it is entirely in correct to say that the civil Court has not given any decree about her right to a share. She was declared a heir to Amir-ud-Dowla and entitled to a share in his private property. This was all that a civil Court could do and this was enough under the Resolution No. 2 of 1303 F and the circular No. 35 of 1306 F.

No doubt the inam inquiry was concluded long ago; but the above orders required that the muntakibs should be amended and the decree of the civil Court executed by the Atiyat Department. We are aware that there are decisions of the Atiyat Department that even after a declaratory decree as the grant is entirely at the will of the grantor the grantor is not bound to execute it, still the usual practice has been to execute the civil Court''s decree and this is borne out by orders of 1303 F and 1306 F.

All this will show that Mr. Crofton''s judgment was against the established law and practice of the(sic) Atiyat Department and this was an error apparent on the face of the record and hence the Board of Revenue was justified in setting aside the judgment of Mr. Crofton on 14th Aban 1354 F. This will show that there is no substance in the H third contention that the provisions of Order 47, Rule 4, were not observed.

9. There remains the question whether the Revenue Minister Shri B. Ramakrishna Rao (as he then was) was not competent to grant a share to the Respondent in the 4 muntakibs and the Chief Minister Mri Vellodi had no power to confirm this on the ground that, before the advent of the Constitution of India, Jagirs were granted by H.E.H. the Nizam under his prerogative rights and, these rights were put an end to by the Constitution. We are afraid that here there is a misapprehension on the part of the learned advocate.

Even in the minority judgment (in the Kamal Yar Jung Virasat''s case) Ahmed-Un-Nissa Begum v. The State AIR 1952 Hyd 163 (v. 39) (D) it was held that prerogatives are amenable to curtailment by legislation; that land and land revenue are subjects over which the executive of this State has power to deal with under item 13, list 2 of Sch. VII read with Article 295(2) of the Constitution. The ratio decidendi of the minority judgment was that no doubt the executive could pass orders regarding land and land revenue, and regarding jagirs and their revenues us they are incidental to ownership of land, still, having regard to Section 21 of the Jagir Abolition Regulation of 1358F which provides that oil claims regarding jagirs should be justiceable by the civil Courts, the executive can grant compensation for jagirs after an adjudication by the civil Courts only.

The minority judgment, to which one of us was a party, proceeded on this very ground that as Mr. Vellodi not only directed payment of compensation, which he could do, but also sanctioned succession which he could not do, for the reason that the granting of succession was, u/s 21, a subject justiceable by the civil Court, his order was ultra vires. It was pointed out there that if succession is determined by a Court of law, the parties get two rights of appeal, on the other hand if it is determined by the executive, the parties are deprived of these rights.

In the case now before us, however, there is no bar to granting of guzarah by the executive to the Respondent as her right to succession has been decided by the civil Court. The Darul Kazah decided her succession and this judgment became final, after an appeal against it was dismissed for default (vide page 85 of the printed paper book).

Hence, we are clearly of the opinion that the order of the Revenue Minister Shri B. Ramakrishna Rao (as he then was) is not invalid on the ground of lack of jurisdiction, as the prerogative rights of H.E.H. the Nizam has been determined by the Constitution and the executive is empowered to deal with land and land revenue under the provisions of the Constitution referred to above.

10. The learned advocate has also relied on some other cases in this regard. On these Salar Jung Succession Case - Tahira Begum v. State of Hyderabad (AIR

1953 Hyd 105 v. 40) (E) and the first Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, (F) proceeded on the equality clause of the Constitution of India. Inquiry by ''Commission of the rights, of a class was held to be discriminatory and therefore, violative of Article 14.

In the second Wali-ud-Dowla case, Ameer-un-(V 42) (G), which was also relied on, decided that as no final decision of the dispute took place during the pre-Constitution days when H.E.H. the Nizam, had full sovereign powers, the dispute should now be decided by the ordinary Courts of law, as the sovereign powers no longer exist. This case also does not help the Appellants. The last case relied on is Mudgal Rao v. State of Hyderabad (AIR 1954 Hyd 15 v. 41) (H). There it was held that adoption sanctioned by H.E.H. the Nizam under his prerogative right before the Constitution could not be undone after the Constitution as those prerogative rights do not exist.

This case clearly stands distinguished as the subject matter of prerogative in the case now under appeal is land over which Article 295 and item 18 of list II of Sch. VII gives power to the executive and (AIR 1952 Hyd 163 v. 39) (D), relied on this case of (AIR 1954 Hyd 15 v. 41) (H)7 itself decides that this prerogative can be curtailed and has been determined and the mantle has fallen on the executive under Article 295. Thus, all these cases are of no help to the learned advocate of the Appellant.

11. Thus, considering all the contentions, we are clearly of the opinion that, though u/s 9. Civil Procedure Code, civil Courts have jurisdiction to consider the validity of the judgments of other Courts and though u/s 5, Civil Procedure Code, the CPC applies to the Revenue Courts, yet it does so only when the Rent Acts are silent on any subject. We have shown above that the Rent or Revenue Acts are not silent on the subject of review and, therefore, the review heard and granted by Shri B. Ramakrishna Rao was in accordance with those laws.

What he in fact heard was a review from the order of revision passed by Mr. Savidge and a review from a revision though doubtful under the CPC in view of the decision in 33 D LR 585 (I) is expressly permitted by .Section 160 (7), Land Revenue Act. The prerogatives of H.E.H. the Nizam have been determined & put an end to and the State Legislature is fully competent to legislate and the executive to grant land revenue or compensation for jagirs under the provisions of Article 264, 295 and item 18 referred to above.

12. Thus, there is no force in this appeal. It is dismissed with costs.

Srinivasachari, J.

13. This is a first appeal against the judgment of the Additional Judge, City Civil Court, dated 19-12-1952 in a suit brought by the Appellants for a declaration that the order of the Revenue Minister of 7-4-1951, was ultra vires, inoperative and ineffective so far as the Appellants were concerned. It would be useful to indicate the relationship of the parties by the following genealogical table:

(See Genealogical Table on next page)

After the death of the propositus the Jagirs were granted in the names of the sons and Khadir Ali Khan the last of the sons died in 1322 F. and when the succession opened, Rahatunnissa, the mother of the Respondent now before us, appeared and claimed her share in the Jagir as the granddaughter of Badruddin Ali Khan.

This claim of hers was dismissed and she prayed that she might be allowed to prove her claim in the Dar-ul-Qaza Court and to this effect orders might be passed, whereupon an order was passed permitting her to prove her Nasab in the Dar-ul- Qaza Court (Ecclesiastical Court). This order was passed on 30th Dai, 1330 F. In pursuance of this, order, a Fahmaish was given to her to file a regular suit to establish her ''Nasab''.

PROPOSITUS-BADRUDDIN ALI KHAN (Died 1268 H.) ---------------------------------------|--------------------------------- | | | | Mohd. Munwar Au Khan Asad All Khan Kadir Au Khan Mehboob Begum (Died 1322 F.) | | | --- Rahatunnissa | | | | | | Asraf Ali Yasin Ali Inayat Ali Hasan Ali Roshan Fatima Khan Khan Khan Khan Begum Begum

14. Rahatunnissa thereupon filed a suit in the Dar-ul-Qaza Court and her suit was decreed on 24th Mehr 1342 F. and it was declared that she was the daughter of Mehboob Begum who was the daughter of Badruddin Ali Khan. There was an appeal preferred by the present Plaintiffs to the High Court and during the pendency of the appeal, Rahatunnissa died and the appeal abated by reason of her legal representatives not having been brought on record. Thus the decree passed by the Dar-ul-Qaza Court became final and conclusive.

15. After these proceedings were over, Fatima Begum, the daughter of Rahatunnissa Begum put In an application before the Nazim-e-Atiyat (Commissioner Crown Grants) on 23rd Dai, 1349 F. stating that she was entitled to 1/7 share in the jagir according to the Mohommedan Law and that she might be given her share.

The Nazim-e-Atiyat passed an order granting her; prayer but he directed that instead of her being given a share in the jagir, she be paid Rs. 50/- from each Muntakhab in lieu of her share. He further directed that the necessary amendments be made in the Muntakhabs and sent to His Exalted Highness, the Nizam for confirmation. Against .this order of the Nazim-e-Atiyat, the Appellants now before us, preferred an appeal to the Revenue1 Member.

The then Rev. Member, Mr. Crofton by his order dated 17th Khurdad, 1350 F. allowed the appeal and set aside the order passed by the Nazim-e- Atiyat holding that the Atiyat Court was not bound by the decree of the Civil Court, as under the Atiyat Regulations it was only in a case where a party was directed by. the Government to go to the Civil Court, that that decree would be honoured by the

Atiyat Department and not otherwise. In this respect he relied upon Resolution No. 2 of 1303 F. and Resolution No. 35 of 1306 F.-of the Revenue Department.

Being aggrieved by this order, Fatima Begum applied for a review of this judgment, and this review was heard by the Revenue Board which had by that time come into existence. The members constituting the Revenue Board were three, the senior member being the Director-General, Revenue Department. This review application was heard by the junior members and the review was allowed.

Again, the aggrieved party applied to the senior member invoking his jurisdiction in revision, and the case then came before Mr. Savidge who was the Director-General then. Mr. Savidge heard the parties and set aside the order by the junior members of the Board. This order was passed on 1st Farwardhi, 1353 Fasli. Thus, ended one stage of the proceedings in the Revenue Department.

16. After the dismissal of the application by Mr. Savidge and his confirming the order of Mr. Crofton of 17th Khurdad 1350 F, Fatima Begum applied for a review of Mr. Savidge''s order and this; review application was admitted by Mr. Ghouse Mohiuddin a member of the Revenue Board. Later on the Review was heard after notice to the other side by the Revenue Minister, Shri B. Ramakrishna Rao, who allowed the review, by his order dated 7-4-1951.

This order of the Revenue Minister was con- finned by the Chief Minister and he gave his approval on 6-5-1951. It is this order of the Revenue Minister which had the approval of the Chief Minister that is now sought to be attached in this appeal. The trial Court, came to the conclusion that the order of Shri Ramakrishna Rao could not be regarded as ultra vires and, therefore, it dismissed the Plaintiff''s suit. Hence, this appeal.

17. The case was elaborately argued by the learned Advocates of the respective parties. The points that have been canvassed before us are (a) that under the provisions of the Code of Civil Procedure, which had been made applicable to proceedings relating to Atiyat by virtue of Regulation No. 10 of 1338 F. passed under a Firman, the review application should be presented only to the Judge who heard it (vide Order 47, Rule 2) and in this case Mr. Ramkrishna Rao could not be regarded as the person to whom this review application could be presented, (b) that a review could be granted only on the grounds set forth in Order 47, Rule 4 and Shri. Ramakrishna Rao, violated these fundamental principles in granting the Review on other grounds, (c) what Mr. Ramakrishna Rao purported to do was to grant a review of a review which was not allowed in law, (d) inasmuch as there has been a violation of the fundamental procedure, the Rev. Minister''s order was ultra vires, and therefore liable to be set aside.

A further argument was advanced by the learned advocate for the Appellants that after the advent of the Constitution nobody could grant a share in any jagir after the Muntakhab had been sanctioned by H.E.H. the Nizam. It was stated that the Nizam, when he granted the Muntakhab, did so by virtue of his prerogative right.

The Respondent''s learned advocate pressed upon us at the outset that it was not open to the Appellants to question the validity of the order of the Chief Minister by reason of the prohibition contained in the Atiyat Enquiries Act (Section 13). He further argued that the order passed by the Rev. Minister was an order allowing a Review of an order passed in Revisional jurisdiction by Mr. Savidge and therefore, there was no question of the grant of a review of a review.

18. It would be desirable to take up the contentions raised by the Respondent''s learned advocate first. Section 13, Hyderabad Atiyat Enquiries Act, Act 10 of 1952 which was passed on 8-3-1952 says:

Except as provided in this Act, the decision of an Atiyat Court shall be final and shall not be questioned in any Court of law.

Thus this section purports to confer finality on decisions of the Atiyat Courts and they cannot be questioned in a Court of law. It was argued by the learned advocate for the Appellants that where there has been a want of jurisdiction in the authority deciding the case, the Civil Court has always the power to set it aside as being ultra vires.

This question came up for discussion in the Kamal Yar Jung succession, case (D) and it was held that this Act was in the nature of a curative and validating legislation, validating the acts and decisions of all authorities in regard to jagir matters. The effect of this Legislation was that even if in an enactment the sanction of the Nizam was necessary the Nizam purported to validate orders not passed by him, but by persons to whom the powers had been delegated. The effect of this legislation was that all orders passed subsequent to the 1st of Sept. 1943 right up to the coming into force of this Act were declared to be valid.

The order in question, because it is of date 7-5- 1951 comes within the period mentioned in Section13 of the Atiyat Act and therefore there was no flaw in the sanctioning authority and even if there was any flaw, by reason of this legislation it had been cured and validated. Therefore, no question of the order being incompetent or being bad for want of authority can arise. Vide AIR 1952 Iyd 103 , (167) (v. 39) (D).

Their Lordships of the Supreme Court laid down that the insertion of the word ''final'' and ''without appeal'' in Statutes does not take away the right of the superior Court to bring the proceedings before it by certiorari. (Vide Parry and Co. Ltd. Vs. Commercial Employees'' Association, Madras, (J). Therefore, it comes to this that although the powers exercisable by the High Court under Article 226 are not controlled by the insertion of the words ''final'' and ''conclusive'' in any statute with regard to any order, but in so far as the matter is the subject of a regular suit, where it is sought to declare particular order to be ultra vires, these words would take away the jurisdiction of the Court to declare it ultra vires.

We should have disposed of the case on this preliminary point dismissing the suit but inasmuch as other points were also elaborately argued before us we would like to express our opinion on the points raised.

19. Taking the other arguments seriatim we may say at the outset that. Circular No. 10 of 1338F. under which the provisions of the CPC have been made applicable to proceedings in the Rev. Courts says that as far as possible the provisions of the CPC shall govern the proceedings in the Rev. Courts including proceedings relating to Crown Grants. Section 7 of that Circular says:

With regard to appeals, revisions and reviews, as far as possible the CPC shall apply.

Sections 147 and 148 of the Land Revenue Code apply only particular sections CPC and Section 166 which is a provision relating to review says that order passed by an authority could be reviewed by his successor. The result is that Section 166 which relates to proceedings relating to review is not in terms similar to Order 47, Rule 2, CPC Therefore, there is no substance in the argument that the provisions of Order 47, Rule 2 were not complied with.

20. Another argument was that Mr. Ghouse Mohiuddin, a junior member of the Board of Revenue could not have granted the Review. This argument is based upon fallacy. Mr. Ghouse Mohiuddin did not grant the review. He merely admitted it and notice was ordered to the other side and after notice to the other side Mr. Rama- krishna Rao the Rev. Minister heard the case. He heard arguments of the parties on the question as to whether the review should not be granted and having come to the conclusion that it could be granted re-heard the case.

It is not obligatory that there ought to be two stages, one of granting the Review and the other of rehearing the case, for Order 47, Rule 8, Civil Procedure Code.

says ''may at once hear the case, which means that arguments could be heard as to why the review should not be granted and if the Judge is of the opinion that the review should be granted, hear arguments on the merits of the case as well.

21. The argument that the provisions of Order 47, Rule 4 were not adhered to by the Rev. Minister is also futile, for it would appear that in the order of Mr. Crofton which was subsequently confirmed by Mr. Savidge there was an error apparent on the face of the record and it was this.

Mr. Crofton while interpreting the two Circulars referred to above, held that the Revenue Department was not bound to honour the decrees of civil Courts where the party of his own accord approached the civil Court for a decree. This was a mistake committed by the learned Judge, for a perusal of the record would show that on 22nd Isfandar 1331 F. the Nizam-e-atiyat recommended on the application of Rahatunnissa that it would be desirable to direct the applicant to go to a civil Court and obtain a decree of Nasab and her share.

This order was confirmed by the Sadarul Maham on 14th Farwardhi 1331 F. and this in turn: was approved by the Sader-e-Azam on 18th Ardhi-behist 1331 F. In the face of this order of the Sadarul Maham it would be incorrect to say that there was no direction by the Atiyat Court calling upon. Rahatunnissa to establish her title in a civil Court.

Evidently Mr. Crofton was labouring under a misapprehension that Rahatunnissa suo motu appeared in the Civil Court and got a decree and not in pursuance of the direction of the Revenue Court. This has rightly been declared to be an error apparent on the face of the record by the members of the Board of Revenue who allowed the- Review on 14th Aban and the Revenue Minister, Mr. Ramakrishna Rao has also come to the conclusion that this was an error apparent on the face of the record and as such the Review should be allowed.

Thus one of the grounds on which a review- could be granted under Order 47, Rule 4 is satisfied in this case viz. there was error apparent on the face of the record, and therefore the objection on this ground cannot stand.

22. As regards the point that a review of a review was not allowed by law, we are one with the learned advocate for the Respondent that the order passed by Mr. Savidge was in his revisional jurisdiction. This is evident from the fact that as Appellants sought his Revisional jurisdiction and there is provision in the procedure for applying to the senior member against an order of the junior members of the Board and this is done only by way of revision. The order of Mr. Savidge also supports this view, for he says:

I have heard the counsel, for the respective parties concerned in the revision petitions filed'' against the order in Review passed by the Revenue Member.

23. The last argument viz,, that no authority could grant a share or deprive any party of any share in a jagir which had been granted by H.E.H. the Nizam because the jagir was granted by virtue of his prerogative right, we must say that this argument also is without foundation. It would be desirable to refer to the case of Ahmedunnissa Begum v. State of Hyderabad (D) where Ansari, J. observed:

The prerogative of absolute monarch is inconsistent with a republican Constitution; his prerogatives lapsed on 26th Jan. 1950. The executive powers of the State are vested in the Governor or the Rajpramukh as the case may be" - Vide (AIR 1952 Hyd 163 (169) v. 39) (D).

likewise in my Judgment, adverting to this question I have stated that the Nizam was exercising the power under the Statute law of the land and not in exercise of any prerogative (relying upon the case of Attorney-General v. Dekeysers Royal Hotel 1920. AC 508 (K) - vide (AIR 1952 Hyd 163 (168) v. 39) (D). Again it has been observed in the same case;

After the coming into force of the Constitution the Nizam became a Rajpramukh and the executive power of the State was vested in him under the provisions of Article 154 of the Constitution.

Therefore, it was as the head of the Executive that the Nizam granted the jagir and if now an alteration is made in the Muntakhab it will be deemed to be done by him as the head of the Executive with the help of his Ministers. It would not be out of place to refer to an observation of the Supreme Court in the case of P. Joseph John Vs. The State of Travancore-Cochin, (L). Their Lordships referring to the position of the Rajpramukh observed:

The Rajpramukh is only a Constitutional head under our Constitution who is bound to accept the advice of his Minister P. Joseph John Vs. The State of Travancore-Cochin, (L).

Therefore, the order of the Chief Minister as the head of the Administration must be held to be valid and it is no longer open to any party to question the same by reason of the Atiyat Enquiries Act to which we have already referred. For all these reasons we are of the opinion that this appeal should fail. It is therefore dismissed with costs.

