(1953) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 212/5 of 1951-52

Mudgal Rao — APPELLANT

Vs

State of Hyderabad and Another — RESPONDENT

Date of Decision : 10-09-1953

Acts Referred:

Constitution of India, 1950 — Article 164, 226, 238
Hyderabad Atiyat Inquiries Act, 1952 — Section 13, 13(2)

Citation : (1953) 09 AP CK 0003

Hon'ble Judges : Misra, C.J;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : Marutirao Joshi, for the Appellant; C. Rangachari, for the Respondent

Final Decision : Allowed

Judgement

Jaganmohan Reddy, J.—This is an application under Article 226 of the Constitution of India for the issue of writ of certiorari to quash the judgment of the Supply Minister dated 20-10-1951.

The Petitioner, Mudgal Rao alias Narayan Rao, alleged that he was adopted by one Gundabai in 1324F. when he was only a child of 5 years in accordance with the wishes of her deceased husband. Gundabai applied to the Collector of Bidar for sanction and confirmation of the adoption on 9th Aban, 1324F. It. appears that Gundabai died sometime thereafter in 1324F itself. After a protracted enquiry spread over a period of more than a quarter of a century, the Collector held the adoption to be proved on 2nd Dai, 1350F. (6-11-1940) and recommended the case for confirmation of the adoption to the Subedar, Gulbarga.

One Khande Rao, the original 2nd Respondent in this case and the father of the present Respondent, preferred an appeal before the Subedar against this order and the Subedar allowed the appeal on 28-11-1350F. (3-9-1941) and refused to confirm and sanction the adoption. Against this order, the Applicant appealed to the Nazim Atiyat who upheld the decision of the Subedar on 30-12-1351F., (5-10-1941). As against this order, the Applicant again filed an appeal before the Revenue Member on 4-4-1352 F., (7-1-1943) which was referred by the Revenue Member to the Revenue Board on 23-10-1354 F., (29-7-1945) for their opinion. After hearing the parties, the Revenue Board expressed an opinion in favour of the confirmation and sanction of the adoption on 24-7-1358 F., (24-4-1949). In accordance with the procedure laid down by the Chief Secretary''s office memo No. 812 dated 13-3-1949, these proceedings and the opinion of the Revenue Board were submitted by the Nazim, Atiyat for confirmation of the Revenue Member, who agreed with the opinion of the Revenue Board and confirmed the same on 7-9-1358 F., (7-6-1949).

Aggrieved by this order, the Respondent, Khande Rao, filed a revision petition against the opinion of the Revenue Board on 14-9-1358 F. (14-6-1949) which was dismissed on 11-10-13,58 F., (11-7-1949) after the parties were heard by the Revenue Member. It appears that on 9-11-1358 F. (9-8-1949) a note was put up by the Asst. Secretary, Atiyat, in compliance with the verbal orders of the Member, Military Government, in which it was stated that Shri Akbar Ali Khan, counsel for Khande Rao, pleaded that there was a legal flaw in the decision which needs to be rectified and he also further stated that according to the existing office order, Revenue Board had no jurisdiction to hear and decide the case. He, therefore, requested that a date be fixed for rehearing of the case in the presence of the parties. The Asst. Secretary submitted that if approved a date may be fixed and the parties be informed accordingly. Thereupon Shri Seshadri, the then Revenue Minister, made a one-word endorsement on the same date saying ''yes''.

After this, another Revenue Minister, Shri B. Ramakrishna Rao, was appointed and it is said that as he had appeared for some of the parties during the days of his practice, the Chief Minister, Mr. M.K. Vellodi, passed orders on 5-8-1951 that all cases in which the Revenue Minister was appearing as an advocate for any of. the parties, should be heard by the Supply Minister, Shri Vinayakrao. The Supply Minister heard the arguments afresh and passed an order dated 20-10-1951 setting aside the earlier order of dismissal of the Respondent''s original revision passed by Shri Seshadri on 11-7-1949. Tic held that in view of the Government Order dated 11-1-1950 and Circular No. 13, dated 22-2-1950, no further action could be taken and the case must therefore be considered closed; in other words, there was no longer any necessity that previous sanction of the Government should be acquired for the adoption and no orders need therefore be passed on the initial application of Mudgal Rao.

2. The learned Advocate for the Respondent took a preliminary objection to the effect that even if the impugned order be assumed to be irregular or invalid, Sub-section (2), Section 13 of the Atiyat Enquiries Act X of 1952 has now rectified the defect and the petition need not therefore proceed to argument. This contention, in our view, has no force.

A perusal of Sub-section (2) of Section 13 would show that it operated to validate only the orders passed in cases relating to Atiyat grants including jagirs on or after the 18-9-1948 and before the commencement of the Act by the Military Governor, the Chief Civil Administrator or the Chief Minister of Hyderabad or by the Revenue Minister by virtue of the powers given or purporting to be given to him by the Chief Minister. It had no effect on any order passed by the Supply Minister. It is contended that the order of the Chief Minister Shri M.K. Vellodi, transferring all the cases in which the Revenue Minister had appeared for any of the parties as an advocate, to the Supply Minister should be deemed to have appointed the Supply Minister as the Revenue Minister for purposes of those cases.

The Applicant''s Advocate, however, contends that by virtue of Clause (1) of Article 164 read with Article 238, it is the Rajpramukh who appoints a Minister with the advice fit the Chief Minister and as in this case it is not shown that Shri Vinayakrao was appointed a Minister for Revenue, any order passed by him would not be covered by Clause (1) of Section 13 of the Atiyat Enquiries Act. In the view we take on the other point raised by the learned Advocate for the Applicant, we feel it is unnecessary to express any view on the aforesaid question.

3. The main contention of the Applicant is that H.E.H. the Nizam, by virtue of his prerogative granted jagirs and succession to jagirs or revoked such grants or refused to recognise any heir as being entitled to a jagir or preferred one heir entitled to succeed to another distant one. This prerogative right which was vested in him ceased on the coming into force of the Constitution on 26-1-1950. It is said that whatever may have been the position before that date, subsequently neither the Revenue Minister nor the Supply Minister could exercise the power of revoking the prior order whereunder the adoption had been confirmed. There is force in this contention of the learned Advocate for the Applicant. In a recent Full Bench case, Ahmadunnisa Begum v. State AIR 1952 Hyd 163 (FB) (A), to which one of us was party, it was held that after the coming into force of the Constitution, the Nizam''s prerogative of sanctioning the recommendations of the Commission hearing the Jagir Succession cases before the Jagir Abolition Regulation was passed came to an end. Srinivasachari and Deshpande JJ., held that even before the Jagir Abolition Regulation, the Nizam was only exercising his right as the head of the State and even if it; be assumed that he had any prerogative right there was no question of the exercise of such prerogative right when after the Jagir Abolition Regulation the question of the grant of a jagir to a jagirdar did not arise.

These observations of the Full Bench support the view that the power to revoke the sanction for adoption for purposes of the Atiyat property which could only be exercised by virtue of the prerogative right vested in the Nizam, no longer existed and neither the Revenue Minister nor the Supply Minister could set aside a permission to adopt given in exercise of the prerogative right before the Constitution came into force.

4. In these circumstances, we are clear that the order of the Supply Minister dated 20-10-1951 in exercise of now extinct delegated prerogative of the Nizam was wholly without jurisdiction. We therefore, allow the application and direct that a writ of certiorari be issued quashing the said order of the Supply Minister. The Petitioner shall be entitled to his costs which we assess at Rs. 50/- from Respondent No. 2, Khande Rao.