

(1960) 11 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 41 of 1960

Raja Lalit Kumar Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 12-11-1960

Acts Referred:

Central Provinces Court of Wards Act, 1899 — Section 2, 24, 4, 41, 5(1)
Constitution of India, 1950 — Article 19(1), 226, 227, 291, 362

Citation : AIR 1961 MP 197 : (1960) J LJ 1197 : (1961) 6 MPLJ 164

Hon'ble Judges : P.V. Dixit, C.J; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and A.H. Saifi, for the Appellant; H.L. Khaskalam, Addl. Govt, for the Respondent

Final Decision : Partly Allowed

Judgement

Pandey, J.

This is a petition under Articles 226 and 227 of the Constitution for a writ of certiorari to quash an application dated 4 September 1958 which the Collector of Raigarh (respondent 3) made to the District Judge, Raigarh (respondent 4), u/s 5(1)(c) of the Central Provinces Court of Wards Act, 1899 (hereinafter called the Act), and also the two orders passed in pursuance of that application by the District Judge, Raigarh, on 25 June 1959 and 16 February 1960. The petitioner has further prayed for a writ in the nature of mandamus or prohibition to restrain the respondents from giving effect to the aforesaid orders for the purpose of assuming superintendence of the estate.

The petitioner was the Ruler of the erstwhile princely State of Raigarh before it was ceded to the Union of India on 1 January 1948. Under the covenant of merger, his privy purse was fixed at Rs. 1,72,000/- free of taxes and he was declared to be entitled to his personal privileges as well as to the full ownership, use and enjoyment of his private property. On 4 September 1958, the Collector of Raigarh made to the District Judge, Raigarh, an application under Section 5(1)

(c) of the Act for a declaration that the petitioner was unfitted to manage or incapable of managing his own property owing to his having entered upon a course of wasteful extravagance which was likely to dissipate his property.

In support of that application, it was alleged inter alia that he had sold away for inadequate price all but 137 acres of his lands, disposed, of for small amounts his bungalow at Raipur and other buildings, jewellery, cars, guns, pistols and other moveables and also incurred heavy debts.

The petitioner resisted the application on several grounds. After due enquiry, the District Judge held on 25 June 1959 that the petitioner was a landholder within the meaning of the Act and declared on 16 February 1960 that he was unfitted to manage or incapable of managing his property because of his wasteful extravagance which was likely to dissipate his property.

The Act was in force before the commencement of the Constitution. It was also continued in force under Clause (1) of Article 372 of the Constitution. Although the Act was covered by Entry 22 of List II of the Seventh Schedule it was subject to the provisions of Entry 34 of List I of that Schedule providing for "Court of Wards for the estates of Rulers of Indian States". Since the provisions of the Act applied to Rulers and non-Rulers alike,, the President, acting under Clause (2) of! Article 372, modified it by the Adaptation of Laws Order, 1950, by introducing Section 41 in the Act which reads as follows:

"The powers and functions conferred on the State Government by or under this Act shall, in relation to the estates of Rulers of Indian States, be the powers and functions of the Central Government."

We would therefore assume the Act to be valid except in so far and it has been specifically challenged before us.

It is contended that since Articles 2, 3 and 4 of Covenant guaranteed to the petitioner payment of his Privy Purse, full ownership, use and enjoyment of his private property and the personal privileges enjoyed by him, any law affecting his privy purse and enjoyment of his private property would offend against the provisions of Articles 291, 362 and 363 of the Constitution. In our opinion, the Covenant guaranteed payment to the petitioner of his privy purse and afforded protection to his private property so that it could not be subsequently claimed by the State.

The guarantee or assurance was not absolute and did not go beyond what is guaranteed to all the citizens under Article 19(1)(f) of the Constitution: The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, , The State of Bihar Vs. Sir Kameshwar Singh, and Jagannath Behera and Others Vs. Raja Harihar Singh Mardaraj Bhramarbara Roy, . We also think that the position is implicit in the power of the Parliament to make laws with respect to "Court of Wards for the estates of Rulers of Indian States".

The relevant provisions of the Act which govern the action taken against the

petitioner are these:

"4. The Court of Wards may, with the previous sanction of the State Government, assume the superintendence of the property of any land-holder owning land within the local limits of its jurisdiction who is disqualified to manage his property.

(1) The following persons shall, for the purposes of Section 4, be deemed to be disqualified to manage their own property, namely:

(a)

(b)

(c) persons not being zamindars of zamindaris in a Scheduled district, declared by the District Judge on the application of the Deputy Commissioner of the district in which any part of the property of such persons is situated and after such judicial enquiry as he thinks necessary, to be incapable of managing or unfitted to manage their own property owing to their having entered upon a course of wasteful extravagance likely to dissipate their property;

(d)

(e)"

It is urged that no action could be taken u/s 5 of the Act unless it was determined beforehand by the appropriate Government that the petitioner was a land-holder. In our opinion, this contention is not correct. As we read Section 4 of the Act, the following conditions must co-exist before action can be taken thereunder by the Court of Wards:

(i) The person about whose estate action is sought to be taken must be a person disqualified to manage his property within the meaning of Section 5 of the Act.

(ii) He must also be a land-holder owning land within the local limits of the jurisdiction of the Courts of Wards.

(iii) Previous sanction of the appropriate Government has been obtained for the action proposed to be taken.

An enquiry u/s 5(1)(c) of the Act can be made about "persons" and if it be found that they are disqualified, the declaration of the District judge can be used only for the purposes of Section 4 and for no other purpose. Obviously the action taken in this case u/s 5(1)(c) *ibid* is only a preparatory step and it may well be that the appropriate Government may not sanction assumption of the superintendence of the estate by the Court of Wards because the petitioner is not a land-holder within the meaning of the Act or because, for other reasons, it is considered undesirable or improper to do so. The Government concerned is not bound to accord the sanction even if all the conditions essential for assumption of such superintendence are fulfilled. In the circumstances, we think that the enquiry before the District Judge cannot be challenged on the ground that the status of the petitioner as "land-holder" had not been previously determined.

The last contention is that the District Judge, acting u/s 5(1)(c) of the Act, had no jurisdiction to determine whether the petitioner was a land-holder within the meaning of the Act. We think that this contention is well-founded because the only matter committed to the jurisdiction of the District Judge under Clause (c) is the determination by a judicial enquiry of the question whether a particular person is or is not incapable of managing or unfitted to manage his own property owing to his having entered upon a course of wasteful extravagance which is likely to dissipate his property.

That being so, it was not open to the District Judge to consider and decide whether the petitioner was a land-holder. We also notice that, in considering whether the petitioner was a landholder, the District Judge, in his order dated 25 June 1959, relied upon the Notification No. 5661- 6735-XII dated 1st October, 1948 which the State Government issued under Clause (c) of Section 2 of the Act.

Even apart from the question whether, after the commencement of the Constitution, any notification issued by the State Government under the last-mentioned Clause (c) would be valid in regard to the Rulers of Indian States, the Notification itself is assailable on the ground that it declares only the Rulers of a few specified States to be landholders within the meaning of the Act and does not cover the whole class of such Rulers. It appears to us that any valid declaration under that provision must embrace within its ambit all persons belonging to the same class. In view of what we have said in this paragraph, the finding of the District Judge dated 25th June, 1959 to the effect that the petitioner is a land-holder must be struck down.

The petition succeeds in part. The finding of the District Judge dated 25th June, 1959 that the petitioner is a land-holder within the meaning of the Act is quashed. Since the petitioner himself had raised the question and invited a finding, we think that, in this case, the parties should be directed to bear their own costs. The security amount shall be refunded to the petitioner. Counsel's fee Rs. 50/-,