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In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 11 of 1955

Rajvi Abhey Singh — APPELLANT

Vs

The State of Rajasthan and Others — RESPONDENT

Date of Decision : 18-10-1956

Acts Referred:
Constitution of India, 1950 — Article 226
Rajasthan Appeals and Petitions (Discontinuance) Ordinance, 1949 — Section 3, 4(1)
Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 — Section 4, 5, 6
Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 37

Citation : AIR 1958 Raj 12

Hon'ble Judges : K.N. Wanchoo, C.J;D.S. Dave, J

Bench : Division Bench

Advocate : M.M. Vyas, for the Appellant; Kansingh, Deputy Government Advocate and Chandmal, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Rajvi Abhey Singh under Article 226 of the Constitution against the State of Rajasthan, Rajvi Amar Sinath & others, for a writ, order or direction in connection with proceedings said to be pending about the succession to the jagir of Benisar in the former State of Bikaner.

2. The applicant''s case is briefly this. The applicant is a Gajsinghot Rajvi known as Haweliwala and same is the case with Rajvi Amarsingh. The applicant was the Pattedar of village Benisar till it was resumed under the Rajasthan Land Reforms and Resumption of Jagirs Act (No. VI) of 1952. The applicant''s father Rajvi Gulabsingh was the Pattedar of Benisar till his death when the applicant succeeded to him, and was granted a Patta by the then Ruler, of Bikaner in 1935. The applicant''s father Gulab Singh was adopted by Shersing & on Sher Singh''s death the Patta of the village was conferred on Gulabsingh by the then Ruler of Bikaner in 1920. The applicant and his father were thus in possession of the jagir of Benisar since 1920, till it was resumed by the State.

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3. In October, 1954, the applicant was in formed that the succession of the applicant to the Jagir of Benisar had been ordered to be re- opened by the Stats of Rajasthan, and the Col lector of Churu had been ordered to make enquiry into the matter. The application then goes on to refer to the course of this enquiry into the details of which we need not go. The applicant by this application challenges the order of the State of Rajasthan, by which the question of his father''s succession to the jagir has been order ed to be reopened. He also challenges the competence of the Collector of Churu and the Sub- divisional Officer under him to make enquiries into the matter.

4. The application has been opposed by the State as well as by Rajvi Amarsingh. It is not necessary to set out in detail the grounds of their objection. It is enough to say that their contention is that the order of the Rajpramukh was validly passed for re-opening the case of succession to Benisar Jagir, aS to the competence of the Collector of Churu and the S. D. O. to enquire into the matter, the contention on behalf of the State is that enquiry will now be made by the Jagir Commissioner as provided by Section 37 of the Rajasthan Land Reforms and Resumption of Jagirs Act.

The case of Rajvi Amarsingh on this point is not quite clear, and all that is said is that the applicant can press his claim before the proper forum which has now been created for adjudication of such claims. Reference probably is to the forum created by the Rajasthan Jagir Decisions and Proceedings (Validation) Act (No. 18) of 1955.

5. Two points thus arise for determination in this case. The first is whether the Rajpramukh and the Government acted Within their powers in ordering the reopening of the succession case of Benisar. The second is as to Where the proceedings should take place in case the reopening has been rightly ordered.

6. We shall first consider whether the order of the State Government in the name of the Rajpramukh ordering the reopening of the case of succession to Benisar jagir was properly made by an authority authorised to do so. The case of the State in this connection is briefly this.

7. Though the adoption of Gulabsingh, father of the applicant, was recognised by the then Ruler of Bikaner, it is contended that it was always open to the Ruler to order reopening of the case. Reliance in this connection is placed on the Statement of Powers in force in fee former State of Bikaner. In Appendix A of this Statement of Powers under Head II, item 17 there is a provision for cancellation or modification of any orders passed by His Highness the Maharaja. Such cancellation or modification requires the previous sanction of the sovereign.

Further under Head I of the same Appendix adoption by, or succession of, Gajsinghot Rajvis (i. e. "Deodhiwala" and "Haveliwala" Rajvis) is a matter which was within the exclusive prerogative of the sovereign. Reading these two together, it is obvious that the adoption to Gaj-Singhot Rajvis like the applicant was a matter which could only be sanctioned by the Ruler. If anybody wanted

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any cancellation or modification of any order relating to adoption, or succession to Gajsinghot Rajvis, he had first to obtain the Sanction of His Highness for this purpose before the matter could be considered.

Thus if any adoption or succession had been sanctioned by His Highness among Gajsinghot Rajvis, and if anybody wanted to challenge that after such sanction, he had first to get the sanction of His Highness for reopening the case. Thereafter, the matter would be examined and the parties heard presumably by officers of the State. Finally, after the parties had been heard a report had to be made to His Highness for orders in view of item 1, of Head I of Appendix A, as orders about adoption by and succession of Gajsinghot Rajvis could only be made by His Highness.

8. The case of the State, therefore, is that if any question of adoption had been decided by any order of His Highness, and it was desired by any one to have the matter reopened, there were two stages by which this could be done. In the first place, the person desiring the reopening of the matter would have to apply to His Highness under item 17 of Head II of Appendix A for his sanction for the cancellation or modification of the order. . After that sanction was granted, there would be necessary enquiries by the officers of the State, and the matter would finally be put up before His Highness again for orders under item I, of Head I of Appendix A, if the case related to Gajsinghot Rajvis succession or adoption.

9. We find that in 1946 Rajvis Amarsingh made a representation to the Ruler of the former Bikaner State that the adoption and succession of Rajvi Gulabsingh of Benisar was obtained by misrepresentation, and forgery, and prayed for reopening the question of successioa which had already been determined in 1920. This representation remained pending in the former State of Bikaner, and eventually was ordered to be sent to the Administrator who was appointed on the merger of that State in Rajasthan. Eventually the representation reached the Government of Rajasthan which sent it to the Special Board for consideration.

10. This brings us to Ordinance XL of 1949. That Ordinance was passed for dealing with appeals and petitions etc., pending before the Rulers of the former States, and is known as the Rajasthan Appeals and Petitions (Discontinuance) Ordinance. Section 3 provided for the discontinuance of appeals, revisions, references or petitions to the Ruler under any law which was for the time being in force in any covenanting state and had been kept alive by the Rajasthan Administration Ordinance 1949. Provision was made in Section 4 (1) for pending matters, and it was provided that, (a) if the pending matters related to judicial matters, they were to be heard by a Special Court to be constituted by the Rajpramukh, (b) if they related to judicial revenue matters by a Special Board to be constituted by the Rajpramukh, and (c) in other cases by the Government. The State treated the application of Rajvi Amarsingh as pending, and it was thought to relate to a judicial revenue matter. That was why the State of Rajasthan referred it to the Special Board constituted under Ordinance XL of 1949 for decision. The Special Board, however, returned the file saying that the

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matter was not a revenue judicial matter but appeared to be executive in nature. Thereafter, the application of Raivi Amarsingh was dealt with by the Government under Clause (c) of Section 4 (1) of Ordinance XL of 1949. The Revenue Secretary gave a hearing to the parties on behalf of Government, and eventually the Government passed an order in the name of the Rajpramukh to the effect that the case be reopened, and pending its decision payment to the present jagirdar of the amount of cash Guzara and the income of the Thikana be suspended.

11. The question, therefore, that arises is whether the State of Rajasthan was justified in passing the order of reopening the succession case of Benisar, which it did on the application of Rajvi Amarsingh, filed in 1946, under Clause (c) of Section 4 (1) of Ordinance XL of 1949. It has been contended on behalf of the applicant that this is a case which is not covered by Section 4 (1) of Ordinance No. XL of 1949 at all. The argument is that Section 4 refers to cases which are dealt with u/s 3, and these are cases which arise under any law which was in force in the covenanting state. It is urged that there was no law in force in the covenanting State of Bikaner for petitions like the one made by Rajvi Amarsingh in 1946. Therefore Section 4(1) would have no application and the State Government would not be authorised to pass any order under Clause (c) of that section.

12. We are of opinion that there is no force in this contention. We may in this connection, refer to the statement of powers of the Government of Bikaner. That, in our opinion, is a law showing what) powers are vested in what authorities including the Maharaja. Under Head II of Appendix A, cancellation or modification of any orders passed by His Highness the Maharaja requires his previous sanction. Thus a petition has to be made to the Maharaja under item 17 of Head II if any one wants the cancellation or modification of any order passed by His Highness. There was provision for dealing with petitions made to His Highness as will appear from the Rules issued from the Prime Minister''s Office in April, 1942, copy of which is Appendix XIV on the record.

We are, therefore, of opinion that the law for such a petition was to be found in the Statement of powers, at item 17 referred to above, and the procedure for making and deal-ins with these petitions was to be found in these rules. Therefore, this petition, which was made by Rajvi Amarsingh in 1946 to the Ruler must be treated to be an application under a law in force in the covenanting state, of Bikaner. Such being the case, and the application being still pending when the former state of Bikaner merged in the present state of Rajasthan, it had to be dealt with as a pending petition u/s 4(1) of Ordinance XL of 1949.

It was first thought that this was an application of the nature of revenue judicial matter, but the Special Board, to which it was sent for decision, sent it back saying that it was of an executive nature, and thereupon the Government dealt with it under Clause (c) of Section 4 (1).

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13. The next question, therefore, which arises, is whether this was a matter which could be dealt with under Clause (c). We are of opinion that this was clearly a case which was covered by Clause (c) of Section 4 (1). As we have already pointed out the procedure in the former Bikaner State, where a person applied for cancellation or modification of an order of His Highness, was for him first to seek His Highness'' sanction.

If he got His Highness sanction for reopening the matter, this petition would be dealt with by the proper officials, and thereafter a final order would be passed by the person authorised to do so be he the Maharaja or some other authority. The fact that in Appendix A (I) the words "exclusive prerogative of the sovereign" are mentioned would not make this part of the statement of powers anything less than law, for the person who had the power under that provision to pass orders was the Maharaja.

14. The first act, therefore, namely the sanction of the Maharaja to reopen the case, would, in our opinion, be only an executive matter, and not a judicial or a revenue judicial matter. It was for the Maharaja to decide in his executive capacity whether he would permit cancellation or modification of the order. If he decided that the cancellation or modification should be permitted, the matter would then be investigated by his officers and such person as would be competent to pass the final order would do so in the end. We are, therefore, of opinion that the State of Rajasthan had power, u/s 4 (1) Clause (c) of Ordinance No. XL of 1949, to deal With this case as it was neither a judicial nor a revenue judicial matter, but a case of executive nature.

15. Next it is urged that even the Rajasthan State was entitled to pass an order under Clause (c) of Section 4 (1), the Rajpramukh should have given a hearing to the applicant personally before doing so as it was a quasi-judicial matter. It is enough to say that we do not think that this was a quasi-judicial matter. Whether a case of succession should be reopened or should not be reopened or the previous order should be modified or should not be modified is in our opinion, a purely executive matter. Once a decision is taken that a previous order should be modified, further proceedings in a case of this kind relating to succession of jagir on the merits would be of a quasi-judicial nature. It was, therefore, not necessary, in our opinion, for the Rajpramukh to give a personal hearing to the applicant. It may be mentioned that in this case hearing was given on behalf of the Government by the Revenue Secretary. That should be sufficient so far as matters of an executive nature are concerned.

16. It was urged that this case of granting sanction for reopening the matter is analogous to granting a review, and therefore even the sanction to reopen the matter must be treated to be judicial or at any rate a quasi-judicial matter. All that is necessary for us to say in this connection is that an analogy like this can be of no use. If the analogy were to be pressed to its fullest extent, it will make the granting of the sanction a judicial matter just as granting of a review is undoubtedly a judicial matter. It is, however, well settled that giving sanction is

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generally speaking an executive matter.

Section 197 of the Code of Criminal Procedure contemplates previous sanction for the prosecution of a judge, magistrate or any public servant not removable from his office save by the order of the State Government or some higher authority. Sanction in such cases is always an executive act, and we fail to see why previous sanction of a ruler for reopening of a jagir succession case in the former State of Bikaner should be treated to be different. We are, therefore, of opinion that it was not necessary for the Rajpramukh to give a personal hearing, and that as the applicant was heard before the order reopening the case was passed, he cannot complain. So far as the first point is concerned, we are of opinion that the order of the Government through the Rajpramukh, by which the succession to Benisar jagir was ordered to be reopened on the petition of Rajvi Amarsingh, which had been made in 1946, was made under the authority of law as contained in Clause (c) of Section 4 (1) of Ordinance XL of 1949,

17. We now come to the next question as to which is the authority who should hear the parties and pass necessary orders after the re-opening of the case. The re-opening was ordered sometime about September, 1954. The order was conveyed by the Revenue Secretary to the Commssioner of Bikaner by letter No. P 4 (70) Rev. I/52, dated the 28th of September, 1954 (vide Ex. L on the file). It also said that the case be got re-examined by the Collector, Churu.

It appears that the Collector Churu in his turn asked the Sub-divisional Officer Churu to examine the matter. Some proceedings were taken by the Sub-divisional Officer Churu, but nothing much has so far been done. The contention of the State before us is that in view of Section 37 of the Rajasthan Land Reforms and Resumption of Jagirs (Second Amendment) Act (No. 17) of 1955 (hereinafter called the Jagir Resumption Act), it is the Jagir Commissioner who has jurisdiction now to enquire into this matter. We have thought it necessary to go into this matter because there seems to be some apparent contradiction between Section 37 of the Jagir Resumption Act, and Sections 4 and 5 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act (No. 18) of 1955 (hereinafter called the Validating Act). Section 37 of the Jagir Resumption Act reads as follows-

"If in the course of a proceeding under this Act, any question relating to title, right or interest in any jagir land, other than a question referred to in Section 3 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, arises and the question so arising has not already been determined by a competent authority, the Jagir Commissioner shall proceed to make an inquiry into the merits of the question so arising and pass such orders thereon as he deems fit.''''

Section 3 of the Validating Act validates certain decisions relating to resumption of jagirs end recognition of succession to the rights and titles of jagirdars. Section 4 provides for continuance of proceedings of the nature referred to in Section 3, and Section 5 provides for disposal of similar proceedings in future,

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and Section 6 provides a forum for the institution and disposal of new cases and proceedings.

18. Obviously the provisions in the two laws overlap. It may be mentioned that Section 37 was being amended by Act 17 of 1955, and the amendment provided that the substituted Section 37 shall be deemed always to have been there. The Validating Act was also passed on the same day as the amended Section 37 of the Jagir Resumption Act. In these circumstances, the question naturally arises to what proceedings Section 37 of the Jagir Resumption Act applies and to what proceedings Sections 4, 5 and 6 of the Validating Act apply.

19. There is no doubt that both the provisions refer to rights and titles of jagirdars and we have so to interpret them so as to harmonise them. They were being passed by the legislature on the same day, and obviously one was not meant to override the other. As we look at it, it seems to us that the Validating Act should be read as a general law, while Section 37 of the Jagir Resumption Act should be looked at as a special law.

Once that is done, whatever is covered by Section 37 will be taken out of the scope of Sections 4, 5 and 6 of the Validating Act. Now Section 37 of the Jagir Resumption Act refers to disputes of title etc. in proceedings under that Act. Section 37, therefore, applies only to those cases where jagirs have been resumed under the Jagir Resumption Act. Where jagirs are not resumed, the provisions of the Validating Act will apply.

20. Then we have to look at the effect cf the parenthetical clause which is as follows -

"ether than a question referred to is Section 3 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955".

21. This parenthetical clause excepts certain cases from the purview of the Jagir Commissioner, even if the Jagir is resumed. We have, therefore, to ascertain what these words mean. It is obvious that these words take out of the purview of Section 37 all cases of the nature referred to in Section 3 of the Validating Act. These questions are of two kinds viz. (1) relating to succession to jagirs and (2) relating to resumption of jagirs. If, therefore, a question relates to succession to, or resumption of jagirs, it has not to be decided toy the Jagir Commissioner u/s 37 of the Jagir Resumption Act, and must be decided under the Validating Act. The Jagir Commissioner can thus decide u/s 37 all questions of title etc. relating to jagirs resumed under the Jagir Resumption Act except those relating to succession to, or resumption of, jagirs under the laws of the covenanting States.

22. This, however, does not finish the matter, for there is yet another restriction. Omitting the parenthetical clause appearing in Section 37 that section reads as follows -

"If in the course of a proceeding under this Act any question relating to title, right or interest in any Jagir land arises and the question so arising has not

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already been determined by a competent authority, the Jagir Commissioner shall proceed etc. etc."

This section obviously gives jurisdiction to the Jagir Commissioner to decide questions relating to title, right or interest! in any jagir, if such a question arises in the course of a proceeding under the Jagir Resumption Act, and has not already been determined by a competent authority. The point that arises in this connection is what is the meaning to be attached to the words "has not already been determined by a competent authority". The argument is that these words mean that the question should have been finally determined before it arises in the course of proceedings under the Jagir Resumption Act, and if it is finally determined the Jagir Commissioner will have no right to go into it.

But if the question has not been finally determined, and has only been determined say by the first court or tribunal competent to decide, but there is an appeal pending, the question cannot be said to have been determined by a competent authority, and the Jagir Commissioner would have a right to go into that question afresh in spite of the appeal pending before a proper authority. It is being urged that this was the intention of the legislature, and whatever may be the stage at which a proceeding is pending, if it has not been finally determined, the Jagir Commissioner would have a right to determine it, and all proceedings taken before the resumption would be set at naught.

23. We have given this matter our earnest consideration, and have come to the conclusion that we cannot give this far reaching meaning to the words "the question so arising has not already been determined by a competent authority." Let us take an example of what would happen if this meaning were to be given to these words. Suppose that a cafe relating to a jagir was heard by a civil court, and has been decided by the High Court (such a thing is possible in the territory which was in the former state of Marwar) and an application for special leave is pending before the Supreme Court, and the jagir is then resumed.

If this interpretation is to be accepted, all the proceedings taken right up to the High Court would become useless, and the matter would have to be determined afresh by the Jagir Commissioner. We are of opinion that the legislature could not have intended this when it enacted Section 37.

24. We may in this connection refer to The Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (No. I) of 1951. By that Act the jurisdiction of the revenue courts was defined for this State. In the covenanting States this definition was not always very clear, and consequently there were many matters which were lieard by the civil courts in the covenanting States, but which under this Act came to toe lieard by the revenue courts. Provision was, therefore, made for pending cases u/s 6 of that Act. Sub-sections (1) and (2) which dealt with cases in one revenue court being heard by another revenue court contained provisions as to transfer of appeals also.

Sub-sections (3) and (4) which dealt with transfer of cases between revenue

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courts and civil courts made no reference to appeals. The appeals were obviously left to be governed by the law under which they had been filed. It seems to us on analogy that the legislature, when it enacted. Section 37 of the Jagir Resumption Act, could not have intended that appellate proceedings should also be brought to naught, and the Jagir Commissioner should enquire afresh into matter covered by those proceedings. Of coarse, there is no crovision in Section 37 for transfer of appeals for hearing by the Jagir Commissioner.

25. It seems to us, therefore, that the words "the question so arising has not already been determined by a competent authority" should be so interpreted as not to affect the hearing of appeals and revisions etc. in such matters, and the Jagir Commissioner should only have jurisdiction to deal with such pending matters as are before the first court or tribunal. We can arrive at this conclusion if we give a strict interpretation to these words. Interpreting them strictly what do these words mean. They only mean that the question of title should have been determined by a competent authority. They do not say that it should have been finally determined.

Strictly and literally therefore these words mean that the jurisdiction of the Jagir Commissioner u/s 37 is taken away even in cases where jagirs have been resumed if the question has been determined at any stage by a competent authority. In other words, if any question relating to title, right or interest in any jagir land has been determined by the first court or tribunal, there is a determination already, so far as the Jagir Commissioner is concerned, by a competent authority, and he cannot proceed to make an enquiry into the merits of the question so arising and pass such orders thereon as he deems fit. It is true that the determination of the first court or tribunal may be under appeal, and may not be final; but so far as the Jagir Commissioner''s authority u/s 37 is concerned, there is a determination by a competent authority available, and the Jagir Commissioner cannot proceed u/s 37.

26. It is urged that this interpretation puts the Jagir Commissioner in a difficult p sit on in as much as there is bound to be complications if he puts into effect the decision of the first court or tribunal, and that decision is leter reversed. We are of opinion that the Jagir Commissioner need not create these difficulties for himself. If any question relating to title etc. arises before the Jagir Commissioner, and he is shown the determination of a competent authority, he must not proceed to enquire into the merits of the case.

At the same time, if he is further told that though there is such a determination, there is an appeal pending in the matter, what he should do is to await the final decision, and thereafter take action according to law. We see no hardship to anybody if the procedure is followed by the Jagir Commissioner.

27. The conclusions therefore at which we arrive after a perusal of Section 37 of the Jagir Resumption Act and Sections 3 to 6 of the Validating Act as to the jurisdiction of the Jagir Commissioner are these:

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(1) The Validating Act is a general law and applies where the jagir has not been resumed. If the jagir has been resumed, Section 37 of the Jagir Resumption Act applies as it is a special law.

(2) Even where Section 37 applies, if the question involved is one relating to succession to, or resumption of, jagirs under the laws of the covenanting States, the Jagir Commissioner has no authority to decide the matter u/s 37 and the decision must be under the provisions of the Validating Act.

(3) If the case does not come under (2) above and a question relating to title, right or interest in any Jagir land is pending before a competent authority, there are two possibilities-

(a) if the matter is pending before the first Court or tribunal, that Court or tribunal would no longer have jurisdiction, and the question should be raised before the Jagir Commissioner u/s 37;

(b) If the matter has been decided by the first Court or Tribunal, there is a determination by a competent authority. In such case, the Jagir Commissioner should follow that decision, or if he is told that there is an appeal etc. pending against that decision, he should await the decision of the appeal etc. and then follow that decision.

(4) All future cases arising after the resumption of the jagir must be taken to the Jagir Commissioner if they relate to title, right or interest in any jagir land other than cases of succession to or resumption of jagirs under the laws of the covenanting States.

28. Let us now look at the present case according to the principles laid down above. The present is a case which arose in September, 1954, because it was then that the reopening of the case was ordered. It is a case relating to succession to Jagir according to the law of the former Bikaner State. The case will therefore be covered bv Section 4 of the Validating Act.

29. The case relates to succession to Gajsinghot Rajvis which was within the exclusive jurisdiction of the Ruler of the former State of Bikaner. After the merger of that State in Rajasthan it could be disposed of only by the Rajpramukh under the covenant. Now u/s 4(d) of the Validating Act such a pending proceeding can only be disposed of by the Board of Revenue. Under these circumstances, the present proceedings before the Collector Churu or the Sub-divisional Officer Churu, must stop, and the case submitted to the Board of Revenue for orders. It Will be for the Board of Revenue to decide what procedure should be followed in the final disposal of the case by them u/s 4(d) of the Validating Act.

30. We therefore, allow this application and order that the proceedings before the Collector of Churu or the Sub-divisional Officer Churu be stopped, and the case submitted to the Board of Revenue to be disposed of by them u/s 4(d) of the Validating Act. As both parties have partly succeeded, we order parties to bear their own costs of this application.

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