

**(1971) 07 KAR CK 0023**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 1289 of 1967, 2733 of 1968, 126 and 5131 of 1969 and 1529 of 1970

Rang Rao Ram Rao Deshpande and Others

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

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**Date of Decision :** 02-07-1971

**Acts Referred:**

Constitution of India, 1950 — Article 19 (1) (f), 19 (5), 31  
Mysore (Abolition of Cash Grants) Act, 1967 — Section 4, 4 (2)

**Citation :** AIR 1972 Kar 98

**Hon'ble Judges :** S.R. Range Gowda, J; D.M. Chandrashekhar, J

**Bench :** Division Bench

**Advocate :** appa Rao and Manohar Rao Jahagirdar, for the Appellant; R.N. Byara Reddy, Government Advocate for H.R. Venkataramaniah, High Court Govt. Pleader, for the Respondent

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## Judgement

Chandrashekhar, J.—In these petitions under Articles 226 and 227 of the Constitution, a common question of law as to the constitutionality of the provisions of the Mysore (Abolition of Cash Grants) Act, 1967. (hereinafter referred to as the Act) arises for determination. All these petitioners were setting cash grants called *Rusum Deshpandiyagiri* from the former State of Hyderabad. They have claimed that the new State of Mysore should pay them cash grants from 30-7-1952 onwards.

2. W. P. No. 1289 of 1967 was filed before the Act came into force. In that petition the petitioner has prayed for issue of a mandamus directing the State Government to pay him the cash grant from 30-7-1952. In the remaining four petitions the constitutionality of Sections 4 and 6 of the Act, has been challenged. In W. P. No. 2733 of 1968 and W. P. No. 126 of 1969, the petitioners have also prayed for quashing the order of the Deputy Commissioner, Bidar who determined the compensation payable to them under the Act for abolition of Cash Grants.

3. The petitioners have claimed that they and their ancestors were being paid cash grants from a very long time even from the days of Rulers who preceded the Moghul Emperors, and that subsequently these grants were confirmed by the Nizam of Hyderabad. According to them, these grants were made originally in consideration of services rendered by their ancestors as Deshpandyas and that even after they (their ancestors) ceased to render such services, those grants were continued.

4. The then State of Hyderabad enacted the Hyderabad Abolition of Cash Grants Act, 1952. (hereinafter referred to as the Hyderabad Abolition Act) which came into force on 30-7-1952. That Act provided for abolition of cash grants and for payment of compensation to certain classes of the erstwhile holders of such grants. The constitutionality of that Act was challenged before the then High Court of Hyderabad. In *In Re: Manikonda Satyanarayana*, a Bench of the Hyderabad High Court held that the Hyderabad Abolition Act. in so far as it provided for abolition of cash grants without payment of compensation, was unconstitutional.

5. Against that decision of the Hyderabad High Court, the then State of Hyderabad had preferred appeals before the Supreme Court. After reorganisation of States, the State of Andhra Pradesh which was substituted for the State of Hyderabad, as the appellant in those appeals, withdrew them and they were dismissed by the Supreme Court as withdrawn.

6. Subsequently, the petitioner In W. P. No. 2733 of 1968 and certain other holders of cash grants, filed applications before the Deputy Commissioner. Gulbarga for payment of cash grants from 30-7-1952. They also approached the Government and the Divisional Commissioner. Gulbarga, with similar requests. Those applications were not disposed of. Then they filed W. Ps. Nos. 1540 of 1964 and 1762 of 1966 praying for issue of a mandamus directing the State of Mysore to pay them cash grants from 30-7-1952. This court directed the Divisional Commissioner, Gulbarga to treat the applications as applications presented under the Hyderabad Atiyat Enquiries Act and to dispose of their claims according to law, within 6 months.

7. In the meanwhile the Act came into force on 11-12-1967. The Deputy Commissioner. Bidar, determined cash compensation payable u/s 4 (2) of the Act to the erstwhile holders of cash grants and directed payment of such cash compensation to those holders of cash grants.

8. The petitioners have challenged the constitutionality "of Sections 4 and 6 of the Act. In order to appreciate the contentions on their behalf, it is necessary to set out the relevant provisions of the Act.

9. The Act came into force on 21-12-1967.

10. The object of the Act as stated in its preamble, is to discontinue certain classes of cash grants in the Hyderabad Area of the new State of Mysore.

11. Sub-section (1) of Section 3 provides that the Act shall apply to any cash grant specified in the Schedule other than those mentioned in sub-section (2). Sub-section (2) of that Section provides that the Act shall not apply to cash grants given for the support of any religious or charitable institution, or to any person for the performance of any service or charity of a public nature. The material parts of Section 4 read: --

4. Abolition of Certain grants and payment of compensation therefor: --

(1) Notwithstanding anything contained in any law, custom, usage, sanad or decree or order of a court or other authority and subject to the provisions of Sub-section (2). all cash grants specified in Part A of the Schedule which were payable or enforceable during the year commencing on the 1st April 1952 or any subsequent financial year ..... shall be discontinued and cease to have effect -

(a) in the case of cash grants specified in Part A of the Schedule -- With effect from the 30th of July 1952;

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(2) The grantee whose cash grant is abolished under sub-section (1) shall be paid compensation as follows: --

(i) in the case of a cash grant specified in Part A of the Schedule, a sum equivalent to four times the annual amount payable to the grantee;

(4) Where a cash grant to which this Act applies is subject to the rendering of any service, the grantee shall with effect from the date of discontinuance of the grant, stand relieved of the liability to render that service.

(5) \*\* \*\* \*

12. Section 5 of the Act enables the Government to make rules to carry out all or any of the purposes of the Act.

13. Section 6 of the Act provides that all claims and all proceedings relating to cash grants, before any authority, shall be dealt with and disposed of in accordance with the provisions of the Act notwithstanding anything in any law contract, decision or order of a court.

14. Part A of the Schedule to the Act reads:--

SCHEDULE (Part A)

Rusums payable to-

(1) Sardeshmukhs

(2) Sardeshpandiyas

(3) Deshmukhs

(4) Deshpandays

(5) Dastbandars (including mirasl-dastbandars).

15. Mr. Manohar Rao Jagirdar, learned counsel for the petitioners in these petitions except W. P. No. 126 of 1969 addressed arguments and Mr. Appa Rao, learned counsel for the petitioner in W. P. No. 126 of 1969, adopted those arguments. Mr. Jagirdar formulated his attack on the constitutionality of Sections. 4 and 6 of the Act as follows:--

(i) Sections 4 and 6 are violative of the fundamental rights guaranteed under Sub-clause (f) of Article 19(1) of the Constitution and is not saved by Clause (5) of Article 19.

(ii) Cash grant being money or chose in action, the right to receive such grant, cannot be acquired by the State; and

(iii) Even assuming that the State could acquire such right, compensation payable under the Act is grossly inadequate and illusory.

16. In W. P. No. 2733 of 1968 and W. P. No. 126 of 1969, an additional plea was taken on behalf of the petitioners therein that a fresh Muntakhab had been granted to them after the commencement of the Constitution and that even if the State had the power to abolish such cash grants at will and pleasure, before the commencement of the Constitution. The State could not claim such power, having granted a Muntakhab after the advent of the Constitution.

17. In the common counter-affidavit on behalf of the State, the defence put forward by the State is briefly as follows:--

The cash grants which were being paid to the petitioners, were purely gratuitous and were not in return for any service rendered or for performance of any function useful to the State or the general public. Such grants were terminable at the will and pleasure of the State. The well recognised incidents of such grants were that they were non-alienable, non-heritable and non-justifiable. It was competent for the State to terminate these cash grants even without the payment of any compensation. The abolition of cash grants did not involve any process of acquisition. Hence no question of adequacy of compensation or violation of Article 31 of the Constitution, arises.

18. Elaborating his first ground of attack on the constitutionality of Sections. 4 and 6 of the Act, Mr. Jagirdar submitted that the right to receive cash grants must be regarded as property, that the right to hold such property has been guaranteed under Article 19(1)(f) of the Constitution, that the abolition of cash grants affects the petitioners' right to hold such property and that such abolition cannot be said to be in the interest of the general public so as to attract Clause (5) of the Article 19.

19. In order to examine the validity of the above contention, it is necessary to ascertain the nature and the extent of the rights of the petitioners to receive

cash grants.

20. The history and the nature of cash grants have been elaborately considered by a Bench of the former Hyderabad High Court in *In Re: Manikonda Satyanarayana*, and this is what their Lordships said at page 46:--

"Prior to the Fasli Year 1275 (1865-66 A. D.), the Hyderabad State was divided for the purposes of revenue administration into several "Sarkars"; each "Sarkar" consisted of several "Mahals" and each "Mahal" of several "Paraganas" and "Patlis", For the collection of the land revenue the "Parganas" were entrusted to the Deshmukhs and the "Mahals" to the Sardeshmukhs ... .. The Sardeshpandayas and Deshpandayas constituted, as it were, the accounting branch of the collection side of revenue administration of the areas entrusted to the Sardeshmukhs and Deshmukhs. They were entrusted with keeping accounts of all collections in the "Paragans" and were entitled to as their remuneration, a fixed percentage of the revenue collections. This form of administration continued till 1282 H. (1864-65 A. P.). when Nawab Said Jung introduced the system of Zillabandi or the divisions of the State into districts. Thereafter the collection of revenue and the maintenance of accounts were directly taken over by the Government, but the percentage given to the Deshmukhs etc.. were continued to them either in lieu of their past services or investments or both. The earlier "rusurns" were thenceforward classified into 2 categories; those that were about 5 per cent, and those that were below 5 per cent. The Deshmukhs were allowed 5 per cent, of the revenue receipt and the Deshpandays 2 1/2 per cent. The recipients of the second category were allowed what they were already enjoying.

These new cash grants were treated by the revenue authorities and later accepted by law courts as a class of Crown grants. The incidents of such grants, namely, their being non-alienable, non-justifiable and non-heritable became attached to the "rusurns" also. As stated in ..... "*Venkatarama Beddy v. Venkatdharma Rao*". 35 Dec. LR 318 (A) the cash grants to Sardeshmukhs and Deshpandayas had long been treated as Crown grants; they were terminable on the death of each grantee and could be given to the heirs at the sole discretion of the grantor. All grants were classified into those where the grantees had a life estate in land such as jagirs, and those others where cash alone was being received by the grantees. The "rusurns" fell in this latter category and as they were Crown grants, they were subject to resumption at the pleasure of the Crown."

21. From the above observations, it is clear that the main characteristics of the cash grants in favour of the petitioners, were that they were non-alienable, non-heritable, non-justifiable and were liable to be resumed at the will and pleasure of the Sovereign.

22. In *Sheik Sultan Sani v. Sheik Ajmodin*. ILR (1892) Bom 431 (PC), the Privy Council, while dealing with the Saranjams in the then Bombay Presidency, made

certain observations as to the general character of Jagirs and grants created by Indian Ruler before the advent of the British Rule. This is what Lord Hannen who spoke for the Judicial Committee, said at page 447;

"With regard to the expression contained in some of the sanads previously cited of the grant being to the person named, "his son, grandson, and etc., from generation to generation, it has been observed by many writers of authority on this subject that they do not, as might be supposed, impart a fixed hereditary tenure. Colonel Etheridge in his preface to the Narrative of the Bombay Inam Commission quotes the language of Thomas Munro in a minute of the 15th March 1822, in which he states that the terms in such documents (sanads) "for ever", "from generation to generation", or in Hindu grants, "while the sun and the moon endure" are mere forms of expression, and were never supposed either by the donor or receiver to convey the durability which they imply, or any beyond the will of the sovereign; and in a subsequent minute of the 16th January 1823, Sir Thomas Munro shows that while the seizure of private property by the native princes would have been considered unjust by the country. Jagirdar grants were not regarded by the people in the light of private property;"

23. In *Shrimant Dattajirao Bahirojirao Ghorpade Vs. Shrimant Vijayasinhrao and Another*, which also relates to Saranjam tenure in the former Bombay Province, the Supreme Court quoted with approval certain observations of Stone, C. J., who spoke for the Full Bench of the Bombay High Court in *Daulatrao Malojirao Vs. Province of Bombay*, The following portion of those observations relates to certain general characters of Jagirdars:--

"..... Jagirs and Saranjams. with the feudal incidents connected with them, are granted or withheld at the will and pleasure of the sovereign power, and, if granted, the fixity of tenure is always subject to interruption and revocation by resumption, be it temporary or absolute in character. No incident normally applicable to private rights between subject and subject, can fetter or disturb the sovereign will."

24. In the light of the aforesaid pronouncement of the Privy Council, the Supreme Court and the Hyderabad High Courts, we must uphold the contention on behalf of the State that cash grants payable to the petitioners, were resumable at the will and pleasure of the sovereign power.

25. However, Mr. Jagirdar contended that even if such cash grants were resumable at the will and pleasure of the then sovereign, the Nizam, the legal position has been altered by the advent of the Constitution and that thereafter it was not open to the States to revoke such cash grants by the exercise of arbitrary power of resumption. Strong reliance was placed on the decision of the Hyderabad High Court in AIR 1955 Hyd 44 which was followed by the Andhra Pradesh High Court in *Veernath and Others Vs. State of Hyderabad (now Andhra Pradesh)* and *Others* In *In Re: Manikonda Satyanarayana*, after holding that cash grants were subject to resumption at the pleasure of the crown, their Lordships

said that the crown prerogatives disappeared with the introduction of the Constitution and that the right to resume cash grants disappeared along with such crown prerogatives. Their Lordships thought that the conclusion followed from certain observations of the Supreme Court in *Virendra Singh and Others Vs. The State of Uttar Pradesh*, . The above decision of the Hyderabad High Court was followed by the Andhra Pradesh High Court in *Veernath and Others Vs. State of Hyderabad (now Andhra Pradesh) and Others*

26. The aforesaid decision of the High Court of Hyderabad was considered by a Full Bench of this court in *Hanumantha Rao Heblikar v. State of Mysore* (1963) 2 Mys LJ 164 . The Full Bench was of the opinion that the conclusion reached by the High Court of Hyderabad, was not warranted by anything said by the Supreme Court in *Virendra Singh and Others Vs. The State of Uttar Pradesh*, . The Full Bench pointed out that the decision in *Virendra Singh*'s case rested upon the facts that the crown grants which conveyed an absolute indefeasible title to the grantees, and that at the time of the promulgation of the Constitution, the grantees did have or possess the proprietary rights which (as found by the Supreme Court) had not been repudiated but impliedly recognised by the Government of India and the Government of Uttar Pradesh. Dissenting from the view taken by the Hyderabad High Court and the Andhra Pradesh High Court, this is what Narayana Pai. J. (as he then was), who spoke for the Full Bench, said at pages 203 and 204:--

"With great respect to the learned Judges of the Hyderabad High Court, we find it difficult to accept the broad proposition that the promulgation of the Constitution has had such an effect on the existence or continuance of the concept of sovereignty as to convert old political grants, admittedly resumable at the instance of the sovereign or the ruler, into presumable property. Our Constitution being a Republican one, all that can be definitely stated to have disappeared is the institution of a single individual as a monarch or sovereign holding in his hand all executive, legislative and judicial functions of the State. It is not the same thing as saying that the concept of a political organisation called the Sovereign State has ceased to exist. The preamble to the Constitution itself says that the Constitution is intended to constitute India into a sovereign Democratic Republic ..... Under the Constitution, the sovereign powers of the State as such are distributed among the various organs of the State. What was abolished and done away with was the exercise of despotic and arbitrary power."

27. His Lordship added that the rights of resumption exercised by the sovereigns of former days, may now be exercised by the State which is the sovereign in accordance with the appropriate provisions of the Constitution.

28. The opinion of the Full Bench of this court is binding on us and we should follow it and not the view taken by the High Courts of Hyderabad and Andhra Pradesh in the aforesaid cases. Moreover, the view taken by the Supreme Court in *Virendra Singh and Others Vs. The State of Uttar Pradesh*, from which the Hyderabad High Court sought to draw support, has since been overruled by the

majority judgment of a larger Bench of the Supreme Court in the State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, .

29. However, Mr. Jagirdar argued that the view taken by the Full Bench of this Court in (1963) 2 Mys LJ 164 , is no longer good law in the light of the following observations of Rajagopala Iyengar, J., in his judgment (delivered on behalf of himself and Sinha, C. JJ in State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, :--

"The next proposition of law which underlies decision in Virendra Singh and Others Vs. The State of Uttar Pradesh, is that the arbitrary and absolute powers which the former Indian rulers possessed to revoke grants made by them did not survive the change in sovereignty brought about by the Constitution, when as a result of the setting up of a democratic polity informed by justice and the rule of law the right to exercise any arbitrary power was abandoned and was no longer available for revoking the grants made by the former rulers ..... In the circumstances, the existence of the arbitrary powers of the native Indian rulers and its absence in the Governments under the Constitution is not relevant, nor the fact that these were not inherited by and did not devolve on the Government of the Union and States functioning under the Constitution."

30. From the above circumstances, Mr. Jagirdar wanted an inference to be drawn that the power possessed by a ruler to revoke a grant, was an arbitrary and absolute power and that such power did not devolve on the Union or the States functioning under the Constitution.

31. As pointed out by the Full Bench of this court, in Virendra Singh and Others Vs. The State of Uttar Pradesh, the grants made by the rulers were absolute grants which conveyed absolute and indefeasible title to the grantees. It appears to us what was characterised by Rajagopala Iyengar, J., as arbitrary and absolute power, has reference to the power to revoke a grant which was absolute at its inception. If, a grant was, from its very nature and from its inception, revocable at the will and pleasure of the Sovereign, the power to revoke such grant, cannot in our opinion, be regarded as arbitrary or absolute power. As stated by the Full Bench of this court in (1963) 2 Mys LJ 164, the Constitution did not enlarge the existing rights but only protects such rights as they exist or can be claimed to exist. The advent of the Constitution did not have the effect of transforming grants which were revocable into absolute and irrevocable grants.

32. It was next contended by Sri Jagirdar that even if cash grants were resumable at the will and pleasure of the Nizam, the position was altered after the enactment of the Hyderabad Atiyat Enquiries Act. 1952. (hereinafter referred to as the Atiyat Act).

33. The Atiyat Act was enacted, Inter alia, to amend and consolidate the law relating to Atiyat grants in respect of Atiyat enquiries, and enquiries as to claims to succession to, or any right, title, or interest in, Atiyat grants.

34. The definition of the term "Atiyat Grants" in Clause (b) of Section 2 (1) of the Atiyat Act, includes cash grants known as Rusums.

35. The term "holder of an Atiyat grant" has been defined by Clause (e) of Section 2 (1) of that Act as a person actually holding the grant. The term "holding the Atiyat Grant" has been defined in Clause (d) of Section 2 (2) as enjoyment of the Atiyat grant. Section 3 of the Atiyat Act reads:--

"3. All Atiyat grants held immediately before the commencement of this Act shall, subject to the provisions of the Hyderabad Enfranchised Inams Act. 1952, continue to be held by the holders there-of and after them by their successors, if any, subject to the conditions laid down in the Muntakhab or Vasikas, if any, relating thereto and to the provisions of this Act."

36. Mr. Jagirdar argued that u/s 3 of the Atiyat Act, the cash grants enjoyed by the petitioners were continued and that thereafter they ceased to be revocable at the will and pleasure of the sovereign power. In support of this contention, reliance was placed on the following observations of the Hyderabad High Court in *In Re: Manikonda Satyanarayana*, of the report:

"There is the further fact that important legal changes in the character of the rights which were favourable to the grantees, were made by the Hyderabad Atiyat Enquiries Act. 10 of 1952 which came into operation on 14-3-1952, i.e., prior to the enforcement of the impugned Act ..... Thus after the Act and as a direct result of it the cash grants enjoyed by the applicants ceased to be terminable on death of the holder and the attribution of heritable property attached to them. The succession was thereafter by force of Section 7 governed by personal law of the holder and we are unable to conceive how in these circumstances the grants can be deemed to be a personal or otherwise than heritable. No doubt Section 5 preserves to the Government the right to resume the grants, yet it makes such a right exercisable only in the prescribed manner. It is true that these "rusums" under the Enquiry Act were still inalienable, but so are the shares of a coparcener in joint family under the Hindu Law as admitted in Bengal and Uttar Pradesh. The elements of hereditability and enjoyment of the benefit without any rendition of services seem to us to be sufficient insignia of property to invest the cash grants with the characteristic of "property" as used in Article 31."

37. With great respect to their, Lordships, we are unable to see how Section 3 of the Atiyat Act which merely provides for continuance of Atiyat grants, can be regarded as altering the character of grants so continued and as transforming a revocable grant into an irrevocable grant. The continuance under the Atiyat Act of an Atiyat grant, is, in our opinion subject to the same incidents, terms and conditions that governed the grant before that Act came into force. All that Section 7 provides is that succession to Atiyat grants shall be regulated by the personal law applicable to the last holder. With all respect to their Lordships, we do not think that Section 7 has the effect of transforming a non-heritable grant

into a heritable grant. That section, in our opinion, only means that if a grant is heritable, succession to such grant will be in accordance with the personal law of the last holder.

38. Thus we are unable to accept the contention of Mr. Jagirdar that by virtue of the Atiyat Act the cash grants in favour of the petitioners, ceased to be resumable at the will and pleasure of the sovereign power.

39. Mr. Jagirdar urged that the petitioners in W. P. No. 2733 of 1968 and W. P. No. 126 of 1969 were granted on 5-11-1951 a fresh Muntakhab bearing No. 2222 and that the cash grants under it were perpetual and could not be revoked or terminated at the will of the sovereign power.

40. The Muntakhab bearing No. 2222 is In Urdu. The Petitioner in W. P. No. 2733 of 1968 has filed an English translation of it. The material portion of It reads:--

"As per the order of the Hon"ble Chief Minister, Govt. of Hyderabad, and as per the opinion of the Nizam Atiyat and the appeal Committee of the Atiyat, the grant mentioned in Col. No. y is granted perpetually in the name of the persons mentioned in Col No. 4. There will be equal distribution between the branch of Venkaji and his four sons Kishan Rao, Thimmaji Rao, Srinivas Rao and Papu Rao will get equal shares. In the branch of Kishan Rao. Salu Bai wife of Narayana Rao is entitled to 4 As. In the branch of Thimmaji Rao. Thirumal Rao alias Appa Saheb will get 4 As. In the branch of Srinivas Rao. Srinivas Rao and Manik Rao sons of Govind Rao will get 2 As. In the branch of Papu Rao, Bapu Rao and Krishna Rao sons of Venkat Rao will get 2 As. share each.

Sd/- Abed AH Khan Saheb Nizame Atiyat

5-11-1951.

Sd/- All Zanab Syed Zhahinulla Buddin, Mudagar Atiyat."

41. We got another English translation of the above portion of the Muntakhab. made by the official translator of the High Court He has used the word "permanently" in place of the word "perpetually" occurring in the translation produced by the petitioner. In other respects the two translations are substantially the same.

42. Mr. Jagirdar laid emphasis on the word "perpetually" or "permanently" occurring in the order dated 5-11-1951 in the Muntakhab and argued that even if the cash grants in favour of these two petitioners were resumable by revocation by the sovereign power before 5-11-1951, after the issue of the fresh Muntakhab, those grants ceased to be so resumable.

43. But neither of these two petitioners had taken such a plea in his petition or his affidavit in support thereof. All that was stated by each of them in his affidavit, was that the latest Muntakhab issued to him was on the date 5-11-1951. However, in the reply affidavit filed by the petitioner in W. P. No. 2733 of 1968, he pleaded as follows:--

"That apart from that, the Muntakhab which is granted to the petitioners is dated 5-11-1951. A true copy of the same is herewith filed marked as Exhibit A in this affidavit. This Muntakhab was granted by the new sovereign after the accession of Hyderabad State to the Indian Union. According to this Muntakhab the grant is granted for perpetuity. From this also, it is clear that the new Sovereign has recognised the right and according to the Act the previous judgments of our High Court and the Hyderabad High Court and the grant that was made in the year 1951, and it is clear that the grants were not resumable as they were resumable previously by the Nizam."

44. But, the learned Government Advocate contended that a plea that was not taken in the petition or in the affidavit in support thereof, cannot be permitted to be raised by a petitioner in his reply or a rejoinder. Support for this contention was sought to be derived from the observations of the Supreme Court and of High Courts including this court.

45. In *Municipal Corporation of The City of Jabalpur Vs. State of Madhya Pradesh*, the Supreme Court observed thus at p. 840:--

"..... Save in exceptional cases, parties should be held strictly to their pleadings and if owing to discovery of new matter of grounds, there is need to modify the allegations either in the petition or in the counter-affidavit, the court should insist on formal amendments being effected, for this would enable each party to state its case with precision and definiteness and the other side would have a proper opportunity to know this case and meet it with appropriate defences ....."

46. In *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, this is what the Supreme Court observed at page 876:

"The High Court noticed in its judgment that there was really nothing in the original affidavit supporting the petition which Government need have answered and yet it allowed affidavits to be filed during the hearing and even in the midst of the pronouncement of the judgment. Each Affidavit on the side of Government itself enabled the appellants to enlarge their allegations and to take up new stands. This unusual course appears to have been permitted from a desire to be just and fair but was hardly proper and the High Court ought really to have stemmed the flow of affidavits, keeping the appellants to their burden and the Government to its burden, if any."

47. In *Mary M. D. D'Souza v. Municipal Commissioner Mangalore City Municipality*. (1968) 1 Mys LJ 90, a Bench of this court observed at p. 93:

".....He (the learned counsel for the respondent) contended that the petitioner has not raised any such plea in the affidavit filed in support of the writ petition. We have perused the affidavit carefully but we find therein no support for the plea as the one now raised by the petitioner's learned counsel. If the petitioner is allowed to raise the ground now urged, it will go outside the grounds

of the "statement for relief and that cannot be permitted. We must however mention that the petitioner has raised this ground in her reply affidavit; she cannot be allowed to raise a new ground without leave of court, which she has not obtained. The petitioner had nearly a year's time before the matter came up for hearing to obtain leave to raise an additional ground, which she has not done--"

48. In *Padmanabhiah v. Sri Jayamurugarajendra Oil Mills*. Davan-gere 1961 39 Mys LJ 904 a Bench of this Court said:--

".....He (the learned counsel for the plaintiff) urged that defendants 2 and 3 are bound to discharge the debt of their father, the first defendant; and similarly defendants 5 to 8 are liable to discharge the debts of their father. This is a new case. This case does not appear to have been put forward in the court below; nor was it considered by that court. In the plaint no decree against those defendants was claimed on the basis of their pious obligation. Hence the concerned defendants had no occasion to plead to this new case. It is true the plaintiff in his reply statement has mentioned that he is entitled for a decree against those defendants, on the basis of the doctrine of pious obligation. The reply statement cannot be said to be a part of the pleadings. The defendants had no opportunity to meet the allegations contained in the reply statement. There was no issue on this point. The trial court did not consider that question. Under these circumstances this court will not be justified in entertaining that plea."

49. In *Vidya Sagar Vs. Board of Revenue, . Nasirullah Beg, J..* (as he then was) observed thus:--

"Learned counsel for the petitioner then argued that two of the selected candidates, viz., those whose names appeared at Nos. 23 and 75 had not been confirmed as supervisor Kanungos on the 1st January, 1962, and therefore, even the amended rule was not complied with. This fact has not been stated by the petitioner in his writ petition or the affidavit accompanying it, nor has this plea been taken in them. For the first time it is stated in the rejoinder affidavit The petitioner has to be confined to the pleas taken by him in the writ petition. The opposite party filed a counter-affidavit in reply to the allegations contained in the affidavit filed with the writ petition or the supplementary affidavit filed with the amended writ petition. No amendment of the writ petition was applied for in the present case nor was any supplementary affidavit filed on this point. The opposite party. therefore, had no opportunity to meet this case."

50. On the other hand. Mr. Jagirdar submitted that though in para 1 of the affidavit in support of each of these two petitions, it had been mentioned that a fresh Muntakhab bearing No. 2202 had been granted to each of the petitioners after 26-1-1950, the State did not deny in its counter-affidavit that averment. It was also submitted by Mr. Jagirdar that even in its counter-affidavit the State did not take the plea that the cash grants were resumable or revocable at the will and pleasure of the sovereign, that it was only in its additional counter-affidavit

the State took such plea and that in view of such plea the petitioner in W. P. No. 2733 of 1968 had to file a reply affidavit in which he pleaded that after the issue of a fresh Muntakhab in favour of those two petitioners, cash grants ceased to be resumable at the will and pleasure of the sovereign.

51. It is true that ordinarily a petitioner cannot be permitted to raise in his reply affidavit a new ground not taken in the petition or in the affidavit in support thereof. But, in these petitions, both parties have proceeded with some degree of informality. The State itself filed an additional counter-affidavit without seeking the permission of the court to amend its first counter-affidavit. The petitioners could not have anticipated the plea taken by the State in its additional counter affidavit that cash grants were resumable at the will and pleasure of the sovereign. It is in reply to such plea that the petitioner in W. P. No. 2733 of 1968 contended that the cash grants could not be treated as resumable after the issue of a fresh Muntakhab on 5-11-1951. Though, the proper course for the petitioners was to ask for the amendment of their original affidavits, we do not propose to take a technical view of the matter and exclude these two petitioners from urging the plea raised in the reply affidavit of one of them, as they had stated in their original affidavits the fact of a fresh Muntakhab having been issued on 5-11-1951.

52. In answer to the contention that after the issue of fresh Muntakhabs in 1951, the cash grants, could not be resumed, the learned Government Advocate contended that issue of a fresh Muntakhab after the advent of the Constitution, could not make any difference in regard to reusability of cash grants of the category of Rusum Deshpandyagiri, because such issue of a fresh Muntakhab did not alter the inherent character of such grants, namely, that they were presumable at the will and pleasure of the sovereign. In other words, according to the learned Government Advocate, the power to resume or terminate such cash grants, springs from the very nature of such grants.

53. The learned Government Advocate maintained that the mere use of , the expressions, "perpetual", "permanent" " "hereditary", "from generation to generation", would not alter the real character of such cash grants or take away the power of the sovereign to revoke or terminate them if such cash grants, were, by their very nature, revocable or terminable at the will and pleasure of the sovereign.

54. It was also contended by the learned Government Advocate that when the Government of Hyderabad issued on 5-11-1951 a fresh Muntakhab to the petitioners in W. P No. 2733 of 1968 and W. P. No. 126 of 1969, it did not purport to grant any new cash grants nor did the Government purport to break away with the past cash grants given to the ancestors of those petitioners; and that the Government merely recognised the petitioners as the heirs of the previous grantees and renewed such cash grants and that by such recognition, renewal or issue of a fresh Muntakhab, the character of the cash grants and their legal incidents were not in any manner altered. In other words, according to the

learned Government Advocate, the preexisting cash grants were recognised, continued and re-granted to the heirs or successors of the previous grantees and by that process the nature and legal character of the cash grants were not altered.

55. We think the above contentions of the learned Government Advocate are well founded and should be accepted. The Muntakhab dated 5-11-1951 did not purport to create a new cash grant. It merely declared which of the members of branches of the family of the original grantee, were entitled to receive cash grants and what their respective shares were. In other words, the Muntakhab is in substance a renewal of the original cash grant. When there is such renewal, the original character of the cash grant and its legal incidents, are not altered.

56. As stated earlier, the Deshpandya giri Rusum cash grants were presumable or terminable at the will and pleasure of the sovereign, and the use of the words, "permanent", "perpetual", "hereditary" or "from generation to generation" in such grants, did not alter such reusability of such cash grants at the will and pleasure of the sovereign. The mere fact that a fresh Muntakhab was issued in respect of such cash grant, after the advent of the Constitution, did not alter the nature of such grant or enlarge the rights of any grantee thereof.

57. Thus, the cash grants in favour of the petitioners in W. P No, 2733 of 1968 and W. P. No. 126 of 1969, did not stand on any higher footing and were abolished by the Act.

58. The next question is whether Section 4 of the Act which provides for discontinuance of cash grants, violates Article 19 or Article 31 of the Constitution.

59. Dealing with a similar Question, namely whether resumption of Saraniam offended Article 19 or Article 31, the Full Bench of this court said thus in (1963) 2 Mys LJ 164. The Saran-jam tenure was wholly a precarious tenure which could be put an end to by the Government at any time by resuming the Saraniam; the very nature of that tenure was such that the tenure holder had no right to say that the Government shall not resume it at the time it proposes to resume; if therefore it is right for the Government to resume the tenure at any time, the tenure holder cannot say that he has been deprived of anything that he is entitled to; once the Government makes up its mind to resume such tenure, there is no longer any right to be protected; the Constitution does not purport to keep alive any rights which according to the law governing them, must cease to exist.

60. The above statement of law, is. in our opinion, equally applicable to abolition of cash grants.

61. However. Mr. Jagirdar strongly relied on the decision of the Supreme Court in State of Madhya Pradesh Vs. Ranojirao Shinde and Another, in support of his contention that abolition of cash grants is violative of Article 19 and Article 31. There, the question that arose for decision was whether the Madhya Pradesh

Abolition of Cash Grants Act, 1963. (hereinafter referred to as the M. P. Abolition Act) was ultra vires of the provisions of the Constitution.

62. Section 2 (1) (B) of M. P. Abolition Act defined cash grant so as to include a grant of money which was enforceable against the State Government on the date of the coming into force of that Act,

63. The relevant portion of Section 3 (A) of that Act read:--

3(A). Abolition of certain cash grants:

(1) Notwithstanding anything contained in any law, custom, usage, sanad, or a decree or order of a Court or other authority whatsoever, all cash grants shall be discontinued and cease to have effect from the commencement of this Act."

64. Section 5 of that Act provided for the manner of determining compensation.

65. The Supreme Court held that money and chose in action cannot be acquired under Article 31(2) of the Constitution, that Article 31 must be construed harmoniously with Article 19(1)(f) and that if so construed, the public purpose contemplated by Article 31. does not include enrichment of the coffers of the State by acquiring money or chose in action and paying a nominal compensation. As the compensation payable under that Act for acquisition of the rights of persons to receive cash grants, was nominal, the Supreme Court held that that Act was invalid.

66. From a closer examination of the above decision of the Supreme Court, it appears to us that what proved fatal to the validity of the M. P. Abolition Act, was the abolition of cash grants which were enforceable by the grantees against the Government. In view of the definition of cash grants in Section 2 (1) (b) of that Act, the Supreme Court held that it was not possible to sever that part of that Act which provided for abolition of cash grants which persons were entitled to enforce against the State, from the remaining part of that Act which might provide for abolition of cash grants which are either gratuitous or resumable. On account of such non-severability, the whole of that Act was struck down.

67. However, the following observations of Hegde. J., who spoke for the court, at p. 1056, are significant for the purpose of these petitions:--

"Different considerations may arise if the grants abolished are gratuitous payments, grants in lieu of services to be rendered or other resumable grants. But as mentioned earlier, the definition of cash grants in Section 2 (1) does not make any distinction between various types of cash grants. Hence the said definition will have to stand or fall as a whole, there being no basis for severing some out of several grants included therein.....,"

68. From the above observations, it is clear that there is no pronouncement of the Supreme Court that abolition of gratuitous cash grants or resumable cash grants, is also violative of Articles 19(1) (f) and 31. The view expressed by the Full Bench of this Court in (1963) 2 Mys LJ 164 that resumption of a grant which

is terminable at the will and pleasure of the sovereign power, does not offend Articles 19 (1) (f) and 31, is in no way affected by the decision of the Supreme Court in State of Madhya Pradesh Vs. Ranojirao Shinde and Another,

69. In the impugned Act there is no provision corresponding to Section 2 (1) (B) in the M. P. Abolition Act defining cash grants. Section 4 of the Act provides for abolition of cash grants enforceable as well as cash grants payable. The pronouncement of the Supreme Court in State of Madhya Pradesh Vs. Ranojirao Shinde and Another, seems to be applicable to only that part of Section 4 of the Act which seeks to abolish cash grants which are enforceable. But that part of Section 4 of the Act, is, in our opinion, clearly severable from the part of that section which provides for abolition of cash grants which are merely payable. In view of such severability, the whole of Section 4 of the Act cannot be held to be unconstitutional.

70. As cash grants were resumable at the will and pleasure of the sovereign power, in order to discontinue payment of cash grants in future, all that was needed was to resume them and there was no need to acquire the right to receive cash grants. The questions whether money or chose in action can be acquired, whether there is any public purpose for such acquisition and whether compensation for such acquisition, is adequate, do not arise at all,

71. However, Section 4 of the Act seeks to discontinue payment of cash grants not merely in future but also retrospectively from certain dates long prior to the Act coming into force. The cash grants payable to the petitioners, which come within Part A of the Schedule to the Act are sought to be discontinued with effect from 1-4-1952. From 30-7-1952 till 21-12-1967 (the date on which the Act came into force) i. e., for about 15 years, cash grants had not been paid to the petitioners. u/s 4 of the Act, a sum equal to four times the annual amount payable to the grantee, is provided as the compensation both for past arrears of cash grants and for recurring payments in future which are discontinued.

72. Mr. Jagirdar contended that even if the State had the power to abolish cash grants, it could do so only prospectively and not retrospectively. Elaborating this point, Mr. Jagirdar argued that until cash grants were actually abolished, they were payable year by year, that the obligation to pay them, and the corresponding right to receive them, had accrued and crystallised into a liability to pay certain sums of money towards cash grants and a corresponding right in the petitioners to get such sums of money from the State, and that the State could not acquire a person's right to receive a sum of money by paying, by way of compensation, a smaller amount, nor was there any public purpose for such acquisition.

73. On the other hand, the learned Government Advocate contended that the State Legislature has power to enact laws which operate retrospectively and that if it has power to legislate for abolishing cash grants prospectively. It can also legislate for abolishing cash grants retrospectively. He added that as the Act has

abolished cash grants with retrospective effect from 1-4-1952, the petitioners cannot claim any amount as payable cash grants as from that date.

74. No doubt, the power to make laws, includes the power to make them with retrospective effect and there is nothing in Articles 245, 246 and 248 of the Constitution which limits the power of Indian legislatures to make laws with retrospective operation. But the power conferred on Parliament and State Legislatures to make laws, is subject to the other provisions of the Constitution including those in Part III of the Constitution. Though ordinarily the State legislature can make laws with retrospective effect, if retrospective effect of such legislation affects the fundamental rights guaranteed in Part III of the Constitution, such retrospective legislation will be void to the extent of such retrospectivity.

75. We think Mr. Jagirdar is right in his submission that until the Act which seeks to discontinue cash grants came into force, the State had an obligation to pay cash grants and the grantees had a corresponding right to receive the amounts of cash grants which had accrued and had become due. Abolition of such claim to money which had become due, and which the grantees had a right to receive, comes directly within the ambit of the ruling of the Supreme Court in State of Madhya Pradesh Vs. Ranojirao Shinde and Another, Hence Section 4 of the Act. in so far as it seeks to abolish payment of cash grants which had become due prior to the date of the coming into force of the Act. must be held to be unconstitutional.

76. However, the learned Government Advocate submitted that after India attained independence, the then Nizam ceded his territory, i.e.. Hyderabad State, to the Dominion of India, that after such cession, the former subjects of the Nizam could claim only those rights which the successor State i. e., the Dominion of India. chose to recognise and that the petitioners who were inhabitants of the territory so ceded by the Nizam, cannot seek to enforce in the municipal courts established by the new sovereign, any rights which they had under the rule of the Nizam, unless the Union of India and the States therein chose to recognise them (those rights).

77. The above statement of the learned Government Advocate, as far as it goes, represents the correct legal position as enunciated in several decisions of the Supreme Court. If the Dominion of India had repudiated or refused to recognise cash grants granted or continued by the Nizam, the petitioners would have been without any remedy. But the Dominion of India neither repudiated nor refused to recognise, cash grants. That the Dominion of India and later the Part, B State of Hyderabad impliedly recognised such grants, can be inferred from the fact that such grants were paid to the grantees till 30-7-1952. As stated earlier, the Atiyat Act which came into force on 14-3-1952, expressly continued all pre-existing cash grants. Once the new State, namely, the Dominion of India, recognised cash grants granted or continued by the Nizam, subsequent repudiation of such grants, cannot be regarded as constituting an act of State.

78. Hence, we hold that Section 4 of the Act, in so far as it seeks to discontinue after the coming into force of that Act. cash grants which were resumable at the will and pleasure of the sovereign power, is not unconstitutional and that that section, in so far as it seeks to discontinue payment of such grants from any date prior to coming into force of that Act, is unconstitutional.

79. In the result, we issue a mandamus directing the State Government, to pay. within 6 months from this date, each of the petitioners cash grants payable to them from 30-7-1952 till 21-12-1967. In W. -P. No. 2733 of 1968 and W. P. No. 126 of 1969 we quash the impugned orders of the Deputy Commissioner, Bidar. dated 25-3-1968 purporting to determine the compensation payable to these two petitioners in full satisfaction of all their claims.

80. As the petitioners have partly succeeded and partly failed in these petitions, we direct the parties to bear their own costs in these petitions.