
(1969) 09 MP CK 0009
In the Madhya Pradesh High Court
Case No : First Appeal No. 17 of 1961

Rao Bhupendra Singh

APPELLANT

Vs

Smt. Gopal Kunwar Umath and Another

RESPONDENT

Date of Decision : 12-09-1969

Acts Referred:

Bhopal Abolition of Jagirs and Land Reforms Act, 1953 — Section 10, 39(1), 39(2)
Bhopal Abolition of Jagirs and Land Reforms Rules — Rule 21
Evidence Act, 1872 — Section 90
Limitation Act, 1908 — Article 120, 131, 62

Citation : AIR 1970 MP 91 : (1970) JLJ 256 : (1970) 15 MPLJ 16

Hon'ble Judges : T.P. Naik, J;G.P. Singh, J

Bench : Division Bench

Advocate : C.P. Sen, for the Appellant; P.S. Khirwadkar, for the Respondent

Final Decision : Partly Allowed

Judgement

Singh, J.

This appeal arises out of a suit which was filed by the plaintiff-respondent Thakur Bharatsingh for recovery of Rs. 13,472.50 paise against the defendant-appellant. Bharatsingh died during the pendency of the appeal and his legal representatives have been substituted in his place. The suit was based on the facts that the plaintiff was a Guzaredar of the defendant who held a jagir known as Mangalgarh jagir. The plaintiff was in possession and enjoyment of income of a part of the village Ankia of the jagir in lieu of Guzara until the abolition of the jagir. In order to induce the Jagirdars to voluntarily surrender their jagirs, the Government of the erstwhile State of Bhopal, where the jagir was situated, offered to pay Mansab or cash annuity to a Jagirdar in the event of his voluntarily surrendering the jagir and applying for conversion of the same into Mansab. The defendant took advantage of this offer and surrendered his jagir to the State. By an order of the State Government dated 12th August, 1953 he was granted Mansab or cash annuity of Rs. 21,507/11/- per year payable in two equal six monthly instalments

during his life. The plaintiff being a Guzaredar of the jagir, became entitled to receive out of the Mansab payable to the Jagirdar such amount for maintenance as may be fixed by the Jagir Commissioner u/s 10 read with Section 45-A of the Bhopal Abolition of Jagirs and Land Reforms Act, 1953. On an application made by the plaintiff, the Jagir Commissioner by his order dated 8th March, 1954 fixed the maintenance allowance payable u/s 10 at Rs. 2,129/8/- per year in two equal six monthly instalments out of the Mansab received by the defendant from the State. In spite of this order, the defendant did not pay the maintenance allowance, although he had received from 1st April, 1954 upto the date of the suit eleven six monthly instalments of his Mansab. The plaintiff, therefore, claimed that he be granted a decree for recovery of the arrears of maintenance allowance amounting to Rs. 13,472.50 paise. The defendant in answer to the suit denied that the plaintiff was a Guzaredar. He also contended that the order of the Jagir Commissioner fixing the maintenance allowance was without jurisdiction, was not based on any law, had no legal force and was a nullity. A further plea was raised that the suit was barred by limitation. The Second Additional District Judge, Bhopal, who tried the suit, held on all the points in favour of the plaintiff and decreed the entire suit. Aggrieved from that decree the defendant has come up in appeal to this Court.

The first contention of the learned counsel for the appellant is that the order of the Jagir Commissioner was a nullity and no suit could be based on it. The learned counsel points out three infirmities in the order of the Jagir Commissioner in support of this contention. It is first submitted that on a true construction, Section 10 of the Act applies only to persons who were receiving maintenance allowance in cash from the income of the Jagirs and the Jagir Commissioner misconstrued the section and applied it to the plaintiff who on his own admission was not receiving any maintenance allowance in cash but was in possession of a jagir village for purposes of his maintenance. The second defect pointed out is that the plaintiff was not in fact a Guzaredar or a person entitled to receive maintenance allowance in cash or otherwise under any law, rule or custom and the Jagir Commissioner wrongly found this fact in favour of the plaintiff. Lastly it is said that the Jagir Commissioner did not take into consideration the various matters mentioned in Clauses (i) to (iv) of Section 10 and Clauses (a) to (g) of Rule 21(1), which he was bound to take into consideration before fixing the maintenance allowance. According to the learned counsel, by reason of these three infirmities the order of the Jagir Commissioner though purporting to be u/s 10 was in reality not an order under that Section and was a nullity. The learned counsel for the respondents in answer submits that the order of the Jagir Commissioner was immune from challenge in the Civil Court and he relies for this submission on Section 39 of the Act. He also disputes the existence of the infirmities pointed out by the learned counsel for the appellant in the order.

To appreciate the rival contentions, it is necessary first to advert to the relevant provisions of the Bhopal Abolition of Jagirs and Land Reforms Act, 1953. The Act

as originally enacted did not apply to Jagirs converted into Mansab. By Bhopal Act No. 11 of 1954, Section 45-A was inserted in the Act had the effect of applying certain provisions of the Act with necessary modifications to Jagirdars whose Jagir lands were converted into Mansab. Section 10 which provides for fixation of maintenance payable out of Mansab to a person who was entitled to receive maintenance allowance from the income of the Jagir and which is the main section under consideration in this case, reads as follows:

"Section 10. Amount of Maintenance. -- Any person who, under any law, rules or any custom having the force of law, is entitled to receive a maintenance allowance out of the income of any Jagir, shall be entitled to receive, out of the Mansab payable to the Jagirdar, such amount for maintenance annually, as the Jagir Commissioner may fix after taking into consideration--

(i) the amount of maintenance allowance which that person used to receive from the jagirdar before the date of conversion into Man-sab;

(ii) The net income of the jagirdar from the Jagir at the time of fixing the said maintenance allowance;

(iii) the net amount of Mansab payable to the jagirdar; and

(iv) such other matters as may be prescribed."

(N.B. The section is quoted as amended by Section 45-A.)

Section 11, which follows Section 10, makes provision for payment to a co-sharer a share out of Mansab payable to a jagirdar in proportion to the share that the co-sharer was receiving from the jagir income before its conversion into Mansab. Provision for allotment of Khud-Kasht land finds place in Chapter IV. Sections 19 to 22 in this Chapter deal with allotment of Khud-Kasht land for personal cultivation of the jagirdar. Section 23, which is also in this Chapter, deals with Khud-Kasht land granted by a jagirdar to a person in lieu of maintenance and such land if in personal cultivation of such person is to be allotted to him. The section reads as follows:

"Section 23. Khud-Kasht allotted in lieu of maintenance allowance.-- Any khud-kasht land granted by a jagirdar to a person in lieu of maintenance allowance payable from the jagir lands which is under the personal cultivation of such person on the date immediately preceding the date of conversion into Mansab, shall be deemed to be settled on such person as an occupant on payment of land revenue at the village rate."

(N.B. The section is quoted as amended by Section 45-A.)

Chapter V of the Act deals with miscellaneous matters. Sections 25 to 27 provide for appeals, but an order of the Jagir Commissioner u/s 10 is not made appealable. Section 29 confers upon the officers, holding inquiries under the Act, powers of a Civil Court under the Code of Civil Procedure, 1908 relating to (a) proof of facts by affidavits; (b) enforcing attendance of any person and his

examination on oath; (c) production of documents: and (d) issuing of commissions. As laid down in Section 43, the Jagir Commissioner and other officers holding an inquiry under the Act are required to follow, as far as may be, the procedure applicable to proceedings under the Bhopal State Land Revenue Act, 1932 and have the same powers in relation to proceedings before them which a Revenue Officer has in relation to original proceedings under the said Act. Bar of jurisdiction of Civil Courts is enacted in Section 39, which is as under:

"Section 39. Bar of Jurisdiction of Civil Courts.--

(1) Save as otherwise provided in this Act no Civil or Revenue Court shall have jurisdictions to settle, decide, or deal with any question which is, by or under this Act, required to be settled, decided or dealt with by the State Government, the Tahsildar, the Collector, the Jagir Commissioner or the Revenue Commissioner.

(2) Except as otherwise provided in this Act, no order of the State Government, a Tahsildar, a Collector, the Jagir Commissioner or the Revenue Commissioner under this Act shall be called in question in any Court,"

Under the powers conferred by Section 46 and other sections, the State Government has framed Rules known as the Bhopal Abolition of Jagirs and Land Reforms Rules, 1953. Rule, 21 of these rules is relatable to Section 10 of the Act and reads as follows:

"21. (1) The Jagir Commissioner in fixing the amount of maintenance u/s 10 of the Act shall, in addition to the matters specified in that section, also take into consideration the following matters, namely:--

(a) the relationship of the person claim-ins maintenance allowance, to the Jagirdars;

(b) the terms and conditions, if any, mentioned in the Sanad or Iqrarnama about the maintenance allowance payable to any person;

(c) any orders of the Ruler or the Government or a Court of law regarding the payment of maintenance allowance out of the income of the Jagirdar:

(d) the prevailing prices of essential commodities as defined in Clause 3(1) of the Bhopal Essential Supplies Temporary Powers Act of 1946; (e) the income of the Jagirdar from Khudkasht and other sources;

(f) area of land in and out of the Jagir held by the person claiming maintenance allowance; and

(g) the minimum requirements of the person entitled to a maintenance allowance out of the income of the jagir concerned and the minimum requirements of the Jagirdar and the members of his family.

(2) The amount of maintenance allowance shall be payable out of the instalments of compensation payable to the Jagirdar for such period only as the payment of instalments of compensation continues. Ordinarily the amount of maintenance

allowance payable to a person fixed under this rule will bear the same proportion to the annual instalment payable to the Jagirdar, as the amount of maintenance allowance which that person used to receive from the Jagirdar before the date of resumption, bears to the Sanadi income of the jagir."

Sub-section (1) of Section 39 of the Act which has been extracted above bars the jurisdiction of Civil and Revenue Courts "to settle, decide or deal with any question" which is by or under the Act "required to be settled, decided or dealt with by the State Government, the Tahsildar, the Collector, the Jagir Commissioner or the Revenue Commissioner". This sub-section has the effect of creating exclusive jurisdiction in the State Government and other authorities, including the Jagir Commissioner, on matters: which under the Act are to be settled, decided and dealt with by them. Even after such matter is so settled, decided or dealt with, the final order passed by the authorities under the Act remains immune from attack in any Court as provided in the second sub-section of Section 39. The language employed in Section 39 is thus apparently quite comprehensive. But statutory provisions like Section 39 of the Act, which oust the jurisdiction of the ordinary Courts in spite of their apparent wide language, have certain inherent limitations. Thus the second subsection which prevents the calling in question in any Court of an "order of the State Government etc. under this Act" will have no application if the order that is called in question, is really not an order under the Act but a nullity. In other words, if a purported order is no order at all the immunity conferred by Sub-section (2) will not protect such an order from being challenged in a Civil Court. The question whether an order of the State Government, Tahsildar etc. is a nullity is also not one which is required to be settled, decided or dealt with by these authorities under the Act and therefore, the bar of Sub-section (1) will not prevent such a question being tried by a Civil Court. The learned counsel for the appellant is, therefore, right in contending that the Civil Court can examine the question whether the order of the Jagir Commissioner passed on 8th March, 1954 fixing the maintenance allowance of the plaintiff is a nullity or not.

Before proceeding to examine the three grounds on which the said order is challenged, it is necessary to consider the circumstances when an order passed by a tribunal or authority of limited jurisdiction can be held to be a nullity. It is settled law that an order made without jurisdiction is a nullity; *Kiran Singh and Others Vs. Chaman Paswan and Others*, . Difficulty, however, arises in applying this rule as the concept of "jurisdiction" which means "authority to decide" *Smith. Judicial Review of Administrative Action*, 2nd Edition, p. 98; *Ujjam Bai v. State of U.P.* AIR 1962 SC 1621 p. 1629, has been changing from time to time and the word jurisdiction is used in more senses than one. According to the original or "pure" theory of jurisdiction, after a tribunal has properly commenced an inquiry, it does not commit any error of jurisdiction by arriving at wrong conclusions of law or fact, for authority to inquire into a question of law or fact includes an authority to decide it rightly as well as wrongly; (*Malkarajun v. Narhari* ilr(1901) 25 337 p. 347 (PC)). According to this "pure" theory,

jurisdiction of a tribunal is determinable "at the commencement, not at the conclusion of the inquiry"; (Smt. Ujjam Bai Vs. State of Uttar Pradesh,).

Defects of jurisdiction in this restricted sense i.e., limited to the stage of commencement of proceedings may arise when fa) authority is assumed under an ultra vires statute; (b) the tribunal is not properly constituted or is disqualified to act; (c) the subject matter or the parties are such over which the tribunal has no authority to inquire; and (d) there is want of essential preliminaries prescribed by the law for commencement of the inquiry. As already stated, according to the "pure" theory of jurisdiction conclusions of law or fact, when inquiry is properly commenced by a tribunal, are conclusive. This theory which was in vogue in the 19th Century in England was later abandoned as it had the effect of reducing jurisdictional control of the Inferior tribunals to vanishing point and making the tribunals Judges of their own jurisdiction giving them authority to usurp powers not intended to be conferred by the Legislature; (See Wade, Anglo American Administrative Law (1960) 82 Law Quarterly Review 226, p. 232). The Courts, therefore, devised the formula of making a distinction between jurisdictional questions of fact or law and questions of fact or law which are not jurisdictional. If a question of fact or law is of the former category, the tribunal, though having authority to inquire into that question, cannot decide it conclusively and a wrong determination of such a question results in making its final decision in excess of jurisdiction. But if a question is of the latter category i.e., non-jurisdictional, the tribunal is free to err in that area. The principle behind this theory, which may be called as the "modified theory of jurisdiction", was well expressed by Farwell, L.J.:

"It is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure -- such a tribunal would be autocratic not limited - and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact," (R. v. Shoreditch Assessment Committee (1910) 2 KB 859 p. 880).

The defect of this theory is that there is no clear cut test for distinguishing between errors within jurisdiction and errors going to (root of?) jurisdiction. Difficulty in this respect is further created by the recognition that the legislature may create a tribunal which is given jurisdiction to decide conclusively even the so-called jurisdictional facts and if that be the case, there ceases to be any distinction between jurisdictional and non-jurisdictional facts, for the tribunal is competent to decide both conclusively and all the facts become non-jurisdictional; (see the oft quoted passage of Lord Esher, M. R. in Queen v. Commissioner for Special Purposes, (1888) 21 Q.B.D. 313 p. 319).

All that can be said is that for distinguishing jurisdictional from non-jurisdictional questions, the true instruction of the relevant Act is the only safe guide. Because of these difficulties it is not surprising that this theory has been at times forcefully criticised; [See Gordon, The Relation of facts to Jurisdiction (1929) 45

Law Quarterly Review 459; The observance of Law as a condition of jurisdiction (1931) 47 Law Quarterly Review 386, 557; Jurisdictional Fact: An answer, (1966) 82 Law Quarterly Review 515], In spite of its defects, the theory is still having its sway in England but its existence and development have been justified not on the ground that it is logically consistent but on the ground that due to its "unpredictability" in application it has "the merit of preserving a flexible control, by which the Court can give a sharp check to what it may think a usurpation of power; the most important thing of all is that legal control of power should be preserved"; (H.W.R. Wade, Anglo American Administrative Law, (1966) 82 Law Quarterly Review 226, p. 232.) "Functus omcio" in America and relegated in that country to the status of "a spare wheel" (ibid p. 237), the theory has been accepted in India and has taken strong roots Smt. Ujjam Bai Vs. State of Uttar Pradesh, ; Addanki Tiruvenkata Thata Desika Charyulu (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, ; State of M. P. v. D. K. Jadav 1968 MP L J 822 P. 827 : (AIR 1968 SC 1186 at p. 1190). In Addanki Tiruvenkata Thata Desika Charyulu (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, , one of the statutes considered was the Madras Estates (Abolition and Conversion into Ryotwari) Act of 1948. Section 9(1} of the Act empowers the Settlement Officer to "inquire and determine whether any inam village in his jurisdiction is an inam estate or not." Section 9(4) makes provision for an appeal to a tribunal and declares that "the decision of the tribunal under this sub-section shall be final and not be liable to be questioned in any Court of law."

In interpreting these provisions it was held that the question whether any village was an inam village or not was a jurisdictional fact and the decision of the Settlement Officer or of the tribunal in appeal that a particular inam village was an inam estate was liable to be questioned in a Civil suit on the ground that the village was wrongly held to be inam village when in fact it was not so. This case clearly demonstrates that an erroneous decision on a jurisdictional question of fact or law makes the ultimate decision without jurisdiction and a nullity and exclusionary provisions using the formula "the decision shall not be called in question in any Court" are ineffective to prevent the calling in question of such a decision in a Civil suit. Want of jurisdiction after commencement of inquiry may also arise when fundamental provisions of the statute are not complied with or fundamental principles of judicial procedure are not followed making the order of the, tribunal invalid or void; such an order can be questioned in a Civil Court even if there be a provision excluding its jurisdiction to question the tribunal's order; AIR 1940 105 (Privy Council) , as explained in Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, . If there be a provision in the Act requiring the tribunal to take Into consideration certain matters before passing its order, such a provision may be held to be fundamental. Even use of the words "Have regard to" may at times have a compelling or mandatory effect: Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others, . Failure by the tribunal to take into consideration the matters specified, which on a

construction of the Act must be taken into consideration, may result in making the order of the tribunal in excess of jurisdiction.

The same result will follow if the tribunal takes into consideration matters which are foreign or irrelevant to the inquiry and its final order is influenced by those matters. An instructive case on the question of construction of an exclusionary provision like Section 39 of the Bhopal Act is a recent decision of the House of Lords, *Anisminic v. Foreign Compensation* (1969) 1 All E R 208 . In this case the question related to the construction of Section 4(4) of the Foreign Compensation Act, 1950 which enacts that "the determination by the Commission of any application made to them under this Act shall not be called in question in any Court of law." It was held that this exclusionary clause did not prevent a challenge on the ground that the order of the Commission was a nullity. Lord Reid in that connection observed:

"Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everything which purports to be a determination but which is in fact no determination at all. And there are no degrees of nullity."....."

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive." (P. 213).

It will be seen that Lord Reid used the word "jurisdiction" in its original sense limited to the stage of commencement of inquiry and he separately categorised other cases of nullity. Lord Pearce, on the other hand, used the word "jurisdiction" in a wider sense embracing all stages of inquiry; all cases of nullity according to him are cases of lack of jurisdiction; to quote his words:

"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an enquiry. Or the tribunal may at the end make

an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper enquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its enquiry into something not directed by Parliament and fail to make the enquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity." (P. 233)

The legal position arising from the above discussion may now be summed up as follows:

(1) An Exclusionary Clause using the formula "an order of the tribunal under this Act shall not be called in question in any Court" is ineffective to prevent the calling in question of an order of the tribunal if the order is really not an order under the Act but a nullity.

(2) Cases of nullity may arise when there is lack of jurisdiction at the stage of commencement of inquiry e.g., when (a) authority is assumed under an ultra vires statute, (b) the tribunal is not properly constituted, or is disqualified to act, (c) the subject matter or the parties are such over which the tribunal has no authority to inquire, and (d) there is want of essential preliminaries prescribed by the law for commencement of the inquiry.

(3) Cases of nullity may also arise during the course or at the conclusion of the Inquiry. These cases are also cases of want of jurisdiction if the word "jurisdiction" is understood in a wide sense. Some examples of these cases are: (a) when the tribunal has wrongly determined a jurisdictional question of fact or law, (b) when it has failed to follow the fundamental principles of judicial procedure, e.g., has passed the order without giving an opportunity of hearing to the party affected, (c) when it has violated the fundamental provisions of the Act e.g., when it fails to take into account matters which it is required to take into account or when it takes into account extraneous and irrelevant matters, (d) when it has acted in bad faith, and (e) when it grants a relief or makes an order which it has no authority to grant or make.

Reverting to Section 10 of the Bhopal Abolition of Jagirs and Land Reforms Act, it has to be noticed that the jurisdiction of the Jagir Commissioner to fix any maintenance allowance receivable out of the Mansab payable to the Jagirdar is in respect of -- to use the words of the section -- "any person who under any law, rules or any custom having the force of law is entitled to receive a maintenance allowance out of the income of any jagir". These words of the section limit the class of persons who can invoke for their benefit the authority of the Jagir Commissioner to fix the maintenance allowance. Having regard to the language used in Section 10 and the absence of any provision for appeal against the order passed, u/s 10, as applied to a jagir converted into Mansab, the Jagir Commissioner cannot be held to possess power of conclusively deciding facts pertaining to his own jurisdiction. Whenever in course of inquiry u/s 10 a

question is raised, whether the person invoking the jurisdiction of the Jagir Commissioner is one falling under the class delimited by the aforesaid words, the Jagir Commissioner will have to decide that question whether it depends upon the construction of the aforesaid words or investigation of facts. But his decision on that question will not be final, for he cannot either by wrong construction of the words of the section or by wrongly determining any fact confer the benefit of the section to persons not entitled to it or deny the benefit to persons entitled to it. An error in that behalf would be an error in relation to a question of jurisdictional law or fact and will result in making his final decision of fixing or declining to fix maintenance allowance a nullity and such a decision will be open to challenge in a civil Court in spite of the exclusionary provision contained in Section 39.

Further, the Jagir Commissioner in fixing the maintenance allowance has to take into consideration matters specified in clauses (i) to (iii) of Section 10 and Rule 21. If the Jagir Commissioner does not take into account these matters at all when those matters are ascertainable and have relevance to the case in hand and if he fixes the maintenance allowance on consideration of matters foreign to section 10, that would again make his decision a nullity liable to be challenged in a civil suit. However, if jurisdiction is invoked in respect of a right person and matters required to be taken into consideration are taken into consideration, the questions as to what weight should be attached to those matters and what amount should be fixed as the maintenance allowance, are questions which will fall within, the area where the Jagir Commissioner has the sole authority and is free to err; his order then even if it be erroneous will not be liable to be called in question in any Court.

Now, the first ground on which the appellant challenged the order of the Jagir Commissioner is that he misconstrued the section and conferred its benefit to the plaintiff who was not receiving any maintenance allowance in cash when the section on its true construction is limited to persons receiving maintenance allowance in cash. This ground pertains to "jurisdictional law" on which the opinion of the Jagir Commissioner is not final and the learned counsel for the appellant is, therefore, right in submitting that the correctness of the ground raised must be examined by us. The learned counsel is, however, not right in contending that the section on its true construction is limited to those persons who were receiving maintenance allowance in cash. The section speaks of persons "entitled to receive a maintenance allowance out of the income of any jagir" and not of persons receiving maintenance allowance in cash out of the income. A person entitled to receive maintenance allowance out of the income of any jagir, may have been receiving the maintenance allowance in various ways depending upon the arrangement which the Jagirdar may have made for paying it. He may have been put in possession of some jagir village or villages for recovering his maintenance from the income of the village, he may have been paid in cash or he may have been granted Khudkasht land (defined by Section 2 (viii) as any parcel of land of a Jagirdar in which the rights of occupant accrue to

him) in lieu of maintenance allowance.

The different arrangements which the Jagirdar may have made prior to the conversion of the jagir into Mansab for paying the maintenance do not affect the character of the person receiving it. Whether paid in cash or otherwise he remains a person entitled to receive the maintenance allowance from the income of the jagir. The case of a person who was granted Khudkasht lands in lieu of maintenance allowance is specifically dealt with in Section 23 of the Act and if such a person is in personal cultivation of the land so granted, the land is allotted to him as an occupant on payment of land revenue at the village rate. Being expressly dealt with under a separate provision, a person who was granted Khudkasht land in lieu of maintenance allowance, though satisfying the description of a person entitled to receive maintenance allowance, may fall outside the general provision contained in Section 10. But case of a person who was granted jagir village or villages in lieu of maintenance allowance is not separately dealt with. It is not disputed that such a person does not become a co-sharer and cannot take the benefit of Section 11 where a co-sharer is given the right to share in the Mansab payable to the Jagirdar. The result is that if the case of such a person does not fall u/s 10, he would lose the village after the jagir is converted into Mansab but will get nothing for his right to receive maintenance from the income of the jagir. Such an unreasonable result could not have been intended by the Legislature. It has, therefore, to be held that Section 10 of the Act is not limited to persons who were paid maintenance allowance in cash from the income of the jagir but also applies to a person who was entitled to maintenance allowance from the income of the jagir, but instead of being paid in cash was granted or put in possession of jagir village or villages for realising the maintenance allowance out of the income of the same,

The second ground on which the order of the Jagir Commissioner is challenged is that the plaintiff was not in fact a person who was entitled to receive maintenance allowance from the income of the jagir under any law, rule or custom and that he was never in possession of village Ankia as a Guzaredar of the Jagirdar. This raises a question of jurisdictional fact on which the opinion of the Jagir Commissioner is not conclusive and the question has to be examined afresh in these proceedings. To prove that the plaintiff was a Guzaredar, he examined himself as PW 1. He stated that from the time the jagir was granted to Shatrusal, an ancestor of the appellant, village Ankia, which was village out of the jagir, came to be in possession of plaintiff's predecessor in lieu of maintenance allowance which was payable by the jagirdar from the income of the jagir and the village remained in his possession till the date of the conversion of the jagir into Mansab. The plaintiff also stated that Chensingh, the father of the appellant when he was jagirdar, applied in 1921 to the State that Guzaredars of his jagir who were in possession of villages of the jagir in lieu of maintenance should be paid cash allowance and the villages be ordered to be reverted to the jagir and that he along with his application filed a list of Guzaredars of the jagir in which the name of the plaintiff's father was mentioned at Item No. 4 and the

amount which used to be received from the village as its income in lieu of Guzara was mentioned at Rs. 2,129-8-11. The originals of this document, forming part of file No. 222, were brought from the Central Record Office, Bhopal and were produced before the trial Court at the time of evidence. Certified copies of the application of Chensingh and the list of Guzaredars attached to it were also produced and marked as Exhibits P. 4 and P. 5 respectively. This application of Chensingh was disposed of by an order of the Finance Secretary of the Government of Bhopal dated 15th December, 1921, a certified copy of which was produced and marked as Exhibit P-7.

The genuineness of the documents exhibits P-4 and P-5, which are more than thirty years old, must be presumed as they were produced from proper custody and their existence was supported by the order of the Finance Secretary (Ex. P-7). The document Exhibit P-5 read alone with Exhibit P-4 contains an admission of the appellant's father that the plaintiff was in fact a Guzaredar and was in possession of jagir village Ankia in lieu of Guzara. The evidence of the plaintiff coupled with these documents was thus sufficient to prove that the plaintiff was a Guzaredar and was in possession of village Ankia in lieu of maintenance till the date of conversion of the jagir into Mansab. The appellant did not enter the witness-box to state that the plaintiff was not in fact a Guzaredar or that the documents, Exhibits P-4, P-5 and P-7 were not real. The conduct of the appellant in not entering the witness-box and not giving any evidence raises a strong presumption against him that the plaintiff's case was true. It was argued on behalf of the appellant that the documents, Exhibits P-4 and P-5, were not proved and that they were actually signed by Mukhtar-Aam on behalf of Chensingh, whose authority was not established and therefore, the documents could not be used in evidence as admissions made by the appellant's father. The documents being thirty years old, do not require any proof and were rightly admitted in evidence as they were produced from proper custody. As regards the authority of Mukhtar-Aam, who made this application on behalf of Chensingh, we must infer that the authority existed as the matter was pursued and the final order was passed in that proceeding by the Finance Secretary.

Moreover, the appellant having not entered the witness-box to deny the authority of Mukhtar-Aam, an inference must be drawn that the Mukhtar-Aam was acting within the authority given to him by Chensingh. On the unrebutted evidence of the plaintiff coupled with these documents, it was rightly held that the village Ankia which was a village within the jagir was given to the plaintiff's predecessors in lieu of Guzara and the plaintiff remained in possession of the jagir till the conversion of jagir into Mansab. It is a significant fact that in 1921 when the appellant's father, applied for resumption of this village he offered to pay cash Guzara equal to the income of the village. That goes to show that the plaintiff and his predecessors had a right to receive maintenance allowance from the income of the jagir and it was in recognition of this right that they were put in possession of the jagir village Ankia. It must be assumed that a right which was exercised and recognised for generations must have had a legal origin. The

right to Guzara, in the absence of any statutory law or rule governing the same, must therefore, in the circumstances of this case, be held to have originated in Hindu Law or custom having the force of law. The plaintiff has thus succeeded in establishing that he was a person entitled to receive maintenance allowance from the income of the iagir under Hindu Law or custom having the force of law and that he was in possession of village Ankia, a jiagir village, in lieu of maintenance allowance payable to him.

Coming to the last ground on which the order of Jagir Commissioner is challenged that he did not take into consideration the matters specified in Clauses (i) to (iii) of Section 10 and Rule 21, it has to be noticed that this ground was not taken at any stage in the trial Court. Even here apart from arguing that none of the matters specified were taken into consideration, the learned counsel for the appellant did not point out what particular matter which was present in the instant case and was relevant in the context of Section 10 was not taken into account. Now the Act and the rules nowhere provide that the Jagir Commissioner must mention in his order all the matters that he takes into consideration in fixing maintenance. Out of the matters specified in Section 10 and Rule 21, it is Possible that in a particular case some of the matters may have little bearing and may not be even stressed by the parties, some may be non-existent or not ascertainable and the Jagir Commissioner may not find it necessary or useful to mention those matters in his order in that case. From the bare omission to say something on each and every matter specified in Section 10 or Rule 21 it cannot be said that the Jagir Commissioner did not take into consideration the matters not referred to by him in the order. It was, therefore, necessary that the appellant should have taken specific plea in the written statement particularising the matters which according to him, though having an important bearing in his case, were not taken into consideration by the Jagir Commissioner and in the absence of such a plea it is not open for the appellant to urge that the matters specified in Section 10 and Rule 21 were not taken into account. Even otherwise, there is no substance in the objection, for a perusal of the order of the Jagir Commissioner makes it clear that he did take into account all relevant matters before passing the order. He considered the income of the village Ankia as also of the iagir prior to its conversion into Mansab. As regards the income of the village Ankia, he relied more on the admission of the appellant's father in Exhibits P-4 and P-5 where the income as regards the plaintiff's share had been shown as Rs. 2,129-8-11 though in a later Sanad the income of the village had been shown at a higher figure. This is a factor of which the appellant cannot complain. The Jagir Commissioner had also referred the quantum of Mansab fixed by the Government which was payable to the appellant as also to the Sanadi income of the Jagir. He had also referred to the previous proceedings in between the parties and the orders of the Revenue Authorities and the Government passed from time to time in those proceedings.

Having himself directed the allotment of Khudkasht lands to the appellant and the plaintiff to which there is a reference in his order, it must be presumed that

he did also take into consideration income of the parties from these sources. He also knew the maintenance allowance payable to other persons out of the Mansab which he had himself fixed. It must be assumed that he must have taken into account the minimum requirements of appellant and the respondent and the prevailing prices of the essential commodities. After going through the order of the Jagir Commissioner, it is not possible to say that he did not take into account all relevant matters in fixing the amount of maintenance payable out of Mansab. The burden to show that the order of the Jagir Commissioner was invalid for non-consideration of matters required to be considered was on the appellant and it has to be held that he has failed to discharge that burden.

All the grounds raised to challenge the order of the Jagir Commissioner thus fail and the said order is upheld as binding on the parties obliging the appellant to pay to the plaintiff the amount of maintenance as fixed in that order from the instalments of Mansab received by him from the Government.

The second and the last contention of the learned counsel for the appellant is that the relief as to arrears of maintenance relating to a period prior to three years is barred by limitation. He submits that the proper provision of law applicable is Article 62 of the Limitation Act, 1908. In reply, the learned counsel for the plaintiff-respondent supports the decree for the entire amount claimed in the suit on the footing that Article 131 of the Limitation Act applies. Article 131 provides twelve years as the period of limitation for a suit "to establish a periodically recurring right" and this period is to be counted from the date "when" he plaintiff is first refused the enjoyment of the right". Now, on a plain grammatical construction the Article is restricted to suits "to establish a periodically recurring right" and does not embrace a suit for recovery of arrears due under that right. It is well settled that strict grammatical construction of the words is the only safe guide in interpreting the Limitation Act; *Bootamal Vs. Union of India (UOI)*, ; AIR 1932 165 (Privy Council) . The words of Article 131 cannot, therefore, be extended to cover a relief claiming recovery of arrears that may have fallen due under a periodically recurring right. Even if in the same two reliefs, one for establishing the right and the other for recovery of the arrears, are combined together. Article 131 will apply only to the first relief and some other appropriate Article or Article 120 will apply to the relief for recovery of arrears. This construction of Article 131 is shared by a number of High Courts; *Janardan v. Dinkar* AIR 1931 Bom 139 ; *Hakim Hidayat Ullah and Others Vs. B. Gokul Chand and Another* ; *Sri Sri Baidyanath Jiu Vs. Har Dutt Dwari and Others*, ; *State v. J. Namboodripadu*, AIR 1959 Ker 1 (FB) and *Padmanava Singh v. Raikishori Devi* AIR 1965 bhu 138 . In all these cases the opinion expressed by a Full Bench of the Madras High Court in *P.C. Manavikrama Zamorin Raja Avergal Vs. R.P. Achutha Menon*, that Article 131 applies also to a suit brought to recover sums due under a periodically recurring right has been dissented from. A reading of the Madras ruling will show that Tyabji, J., who was one of the referring Judges, was of the view that Article 131 could not be extended to cover suits for arrears, but the Full Bench took the contrary view mainly because that was the

prevailing view of that Court. In AIR 1948 397 (Nagpur) , though the point was not directly in issue, Bose, J. expressed that he preferred the opinion of Tyabji, J. in his referring order in P.C. Manavikrama Zamorin Raja Avergal Vs. R.P. Achutha Menon, to that of the Full Bench.

Reference has also been made in the course of argument to Nawab Mir Nazar-ali v. Akaji, (1928) 11 Nag L J 62 where it was held that a suit for recovery of arrears of lawajama was governed by Article 131. But there being no discussion on the point, that case cannot be regarded as an authority for the proposition that a suit for arrears due under a periodically recurring right also falls within Article 131. As already stated, the correct view is that the claim for arrears is outside the scope of Article 131. The next question is, which other Article applies to the claim for arrears of maintenance which was payable to the plaintiff by the appellant out of the six-monthly instalments of Mansab received from the Government. The learned counsel for the appellant suggests the applicability of Article 62, whereas the learned counsel for the respondents submits that Article 120 will apply. Now Article 120 being the residuary Article can only apply if no other Article applies. It has, therefore, to be first seen whether Article 62 applies. This Article applies to suits for "money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use", and the period of limitation prescribed is three years from the date when the money is received. The amount of maintenance fixed by the Jagir Commissioner in favour of the plaintiff u/s 10 of the Bhopal Abolition of Jagirs and Land Reforms Act is payable under the terms of that section out of the Mansab payable to the appellant.

The appellant thus, from the very moment of receipt of Mansab, was under a legal obligation to pay the amount of maintenance fixed u/s 10 to the plaintiff and that part of the money received as Mansab by the appellant can be said to be received by him for the plaintiff's use. It is true that the appellant had been all along denying the right of the plaintiff and at the time of receipt of Mansab he may have very well intended to receive it wholly for his own benefit. However, the test for application of Article 62 is not whether the defendant intended to receive the money for the plaintiff's use. If the money is received by the defendant in such circumstances that from the very moment of receipt the plaintiff has a right to claim it. It is money had and received for the plaintiff's use though actually not received with that intention; A. Venkata Subba Rao Vs. State of Andhra Pradesh, . The amount of Mansab received by the defendant-appellant from the Government to the extent of the amount of maintenance payable from it to the plaintiff must, therefore, be taken as money had and received for the plaintiff's use, notwithstanding that the appellant may have intended to receive it wholly for his own benefit. Article 62 thus applies to the suit and the claim for arrears beyond three years is barred by limitation. The claim which is within time works out to Rs. 6,388-10-9 (Rs. 6,388-67).

The appeal is partly allowed. The suit is decreed to the extent of Rs. 6,388-67 and rest of the claim in suit is dismissed. The success and failure of the parties

being nearly equal, they shall bear their own costs throughout. The decree of the trial Court shall stand modified as above.