

(1959) 08 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 56/P of 1955

S. Hardial Singh and S. Gurbaksh Singh	APPELLANT
Vs	
State of Pepsu	RESPONDENT

Date of Decision : 14-08-1959

Acts Referred:

Citation : AIR 1960 P&H 644

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Judgement

(1) This appeal involves a question of Constitutional law and arises out of a grant made to the appellant Hardial Singh of the property known as "Malwa House" at Nabha by the ruler of that State. The rent free grant was made by the former ruler of Nabha in the exercise of his sovereign powers to the appellant who was related to him. The State of Nabha subsequently came to be merged in the Patiala and East Punjab States Union when proceedings were taken to eject the appellant from this property. The present suit was brought for a declaration that the grant could not be repudiated by the new State of Pepsu. A number of pleas were made on behalf of the State of Pepsu before the trial Judge who decreed the suit. In appeal, the learned Addl. District Judge of Patiala accepted the position adopted by the State of Pepsu that the sovereign rights of the ruler of Nabha had been surrendered and its subsequent merger in the State of Pepsu which repudiated the grant in exercise of its sovereign powers rendered the dispute non-justifiable. This is now the only point which has been canvassed in appeal preferred by Hardial Singh.

(2) The question which calls for determination is whether the grant of the property which had been admittedly in possession of the appellant before the formation of the Patiala and East Punjab States Union could be revoked by the new State after the territory of Nabha had been assimilated in the Union. The Union of the Patiala and East Punjab States was formed on 20-8-1948. The actual covenant signed by the eight rulers including Nabha was signed on

5-5-1948.

The administration of the State of Nabha was taken over by the Rajpramukh of Pepsu on 20th August, 1948 on which date Pepsu Administration Ordinance No. 1 of Samvat 2005 was promulgated in pursuance of which all Laws, Ordinances, Acts, Rules, Regulations, Notifications, Hidayat Firmani-Shahi, having force of law in Patiala State on the date of commencement of this Ordinance applied mutatis mutandis to the territories of the covenanting State and with effect from that date all laws in force in the said State immediately before that date stood repealed.

(3) The Counsel for the appellant contends that the individual grant cannot be elevated to the position of "law" within the meaning of the Ordinance. It was a grant simplicities given by the ruler of Nabha in the exercise of his sovereign powers and clause (b) of Art. VI of the Covenant protected it. Under this clause "all duties and, obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the Union and shall be discharged by it". A similar contention had been raised in the recent Supreme Court authority, of Income Tax Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax, and it was found untenable.

(4) No doubt "law; in a broad sense consists of the principles or rules of human conduct which are enforced in Courts of law and do not include any special rule for a particular person or a particular case (vide Corpus Juris Secundum Vol. 52, p. 1024). However, there are instances when Acts of Parliament in England have been passed for the benefit of persons seeking divorce, and it cannot be denied that such an Act would constitute "law;. (Salmond on Jurisprudence pp. 38-39, 1957 Edn.). So long as it emanates from the sovereign power a rule, even if applicable to individuals, must be regarded as law and in that sense the grant made by the ruler in favour of the appellant was an item of personal law which was liable to be superseded by laws of the new Union.

(5) The next question is whether the grant had actually been repudiated by the State of Pepsu. The repudiation of argent can cease to be justifiable only if it could be regarded as an act of State. The terms, "act of State", means "an act of the Executive as a matter of policy performed in the course of its relations with another State, including its relations with the subjects of that State, unless they are temporarily within the allegiance of the Crown". (Wade and Phillips on Constitutional Law, Fourth Edn. P. 193). An act of State to be such can be exercised only against the subjects of another State unless it be in the course of assumption of sovereign powers by the new State, according to the rule laid down in the judgment of the Supreme Court at p. 823 at paragraph 13:

"In law, therefore, the process of acquisition of new territories is one continuous act of State terminating on the assumption of sovereign powers de jure over them by the new sovereign and it is only thereafter that rights accrue to the resident's of those territories as subjects of that sovereign. In other words, as

regards the residents of territories which come under the dominion of anew sovereign, the right of citizenship commences when the act of State terminates and the two therefore cannot co-exist." The Covenant was signed between the eight rulers of the State of 5-5-1948, and on 20-8-1948 all persons residing in the territories of the Covenanting State become citizens of Pepsu. It seems that it was in about 1952 that the State of Pepsu exercised its sovereign right to repudiate the grant which had been made by the former ruler of Nabha in favour of the appellant. This act of repudiation, in my opinion, could not be defendant as an act of State and once that conclusion is arrived at, the claim of the appellant cannot be thrown out on the ground that the municipal Courts have no jurisdiction.

(6) A similar question came for consideration in Virendra Singh and Others Vs. The State of Uttar Pradesh, The petitioners were granted jagirs by the ruler of Sarila State in one village and by the ruler of Charkhari State in three villages in January 1948. A Union was formed in March 1948 of 35 States including these States and called the United States of Vindhya Pradesh. The Particular villages were subsequently absorbed in the United Provinces (now Uttar Pradesh) by an order of the Governor-General. The Government of Uttar Pradesh in consultation with the Government of India repudiated the grant which had been made by the rulers of Sarila and Chakhari States. It was held by the Supreme Court that the confiscation could not be justified as an act of State.

(7) It seems to me that the ruling of the decision in Virendra Singh and Others Vs. The State of Uttar Pradesh, is fully applicable in the instant case, where also the repudiation of grant had taken place after the formation of the Patiala and East Punjab States Union and even after the Constitution of India had been in force granting equal rights of citizenship to all the subjects of the Union of India. The repudiation could be justified only as an act of State which could be exercised by a sovereign power alone over the subjects of another such power during the course of acquisition of territories or others. Those conditions did not obtain in the instant case, and the present suit is therefore clearly within the jurisdiction of the civil Courts.

Whether or not the grant could be confiscated by legislation or other process of law is a different matter. The plaintiff is certainly entitled to have his claim adjudicated. I would therefore allow this appeal and reversing the decree and judgment of the learned Addl. District Judge of Patiala restore that of the trial Judge. There would be no costs of this appeal.

(8) Appeal allowed.