

(1954) 05 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 55 of 1952

S. Mihan Singh

APPELLANT

Vs

The Sub-Divisional Canal Officer, Harigarh Tehsil and others

RESPONDENT

Date of Decision : 03-05-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1954) 05 P&H CK 0002

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Advocate : Ram Karan Dass, for the Appellant; R.N. Verma, Assistant Advocate General, for the Respondent

Judgement

Mehar Singh, J.—This is a petition under Art. 226 of the Constitution, arising out of these facts.

2. The father of the petitioner, S. Bishan Singh, was nazim canal in the former Nabha State in the year 1957 BK. He then rendered distinguished service to that State in the canal department and in recognition of that service the Ruler of the State, by a Roznamcha Order No. 1717, dated 9th Chet, 1957 Bk., made a grant of one Nal of irrigation water in perpetuity to him without payment of water rates.

S. Bishan Singh was in enjoyment of this grant during his life-time and after him his two sons, Mihan Singh petitioner and S. Kartar Singh, continued to enjoy it in the former Nabha State. After the formation of the Pepsu State in pursuance of the Covenant dated 5-5-1948, the former Nabha State became an integral part of the new State and its administration was taken over by the new state on 20-8-1948. Even after that, there was no disturbance in the enjoyment of this grant by the two sons of S. Bishan Singh, until on 5-7-1952, a demand for water rates was made against the petitioner and his brother by the canal authorities under the Northern India Canal and Drainage Act, as it had been applied in the former Patiala state and as it has been made applicable to the new State of Pepsu.

3. The petitioner claims that the grant in favour of his father by the Ruler of the former Nabha State was a grant in perpetuity to be enjoyed by S. Bishan Singh and his successors, that the grant having emanated from the sovereign Ruler of that State is in the nature of a private statute granting rights of property to S. Bishan Singh and his successors, and that such rights cannot be taken away or abrogated by an executive act of the canal authorities under the provisions of the Canal and Drainage Act.

4. The reply on behalf of the respondents, the Sub-Divisional Officer and the Deputy Collector Canal now at Sangrur, and the Tehsildar at Barnala, is that the grant upon which the petitioner places reliance was only for the life-time of S. Bishan Singh, that if that grant amounts to a personal law in favour of S. Bishan Singh then that law has been repealed by S. 3(1) of the Patiala and East Punjab States Union General Provisions (Administration) Ordinance, 2005 Bk. (Ordinance No. XVI of 2005 Bk.) and that in any case after the formation of Pepsu State the sovereignty of former Nabha State was surrendered to the new State and so any rights that the petitioner had against the former sovereign cannot be enforced by him in the Courts of the new sovereign.

5. In the Roznamcha Order of the Ruler of former Nabha State it is stated that the grant was to S. Bishan Singh in perpetuity. The Learned Counsel for the respondents urges that the emphasis is upon the person to whom the grant was made and therefore inspite of it having been described as in perpetuity it expired with the death of S. Bishan Singh. On the contrary the contention on behalf of the petitioner is that the grant being in perpetuity it enures for the benefit of the successors of S. Bishan Singh. On consideration of the language used in the grant, I am of the opinion that if the intention of the Ruler was to limit the grant to the life-time of S. Bishan Singh only then he would never have said that it was to be in perpetuity for he could very readily have said that it would subsist till the life-time of S. Bishan Singh. It is true that it is not stated in the grant that it was to be for the successors of S. Bishan Singh, but that is implicit from the fact that the grant was made in perpetuity. So, my conclusion is that the grant made by the Ruler of former Nabha State was to S. Bishan Singh and his successors in perpetuity.

6. The grant was an order of the Ruler of former Nabha State, who, at least, in the matter of internal sovereignty was a sovereign Ruler. Therefore his word was law. A similar order made by the Ruler of the former Patiala State has been interpreted in the same fashion in - "Gurdwara Sahib Shri Teg Bahadur, Gaga v. Piara Singh", AIR 1953 Pepsu 1 (A), in which a Roznamcha Order of the Ruler of a former Patiala State was maintained to amount to law and the then learned Chief Justice observed:

When the question arises whether a particular law or a rule or order made or issued is intra vires the Courts must examine the relevant provisions of the Constitution, or in case of a rule or order the relevant provisions of law, with a view to finding out whether the authority that made it had the requisite power.

But no such question can arise in the case of the head of a sovereign independent State for the simple reason that he does not derive his authority from any one and what he lays down or ordains or orders, has the force of law and has to be obeyed.

There is thus no doubt that the Roznamcha Order No. 1717 dated 9th Chet, 1957 Bk., making a free grant of one Nal of water to S. Bishan Singh in perpetuity was a personal law in favour of S. Bishan Singh and his successors.

7. Sub-section (1) of S. 3, Patiala and East Punjab States Union General Provisions (Administration) Ordinance, 2005 Bk. (Ordinance No. XVI of 2005 Bk.) provides:

As from the appointed day, all laws and rules, regulations, bye-laws and notifications made there-under, and all other provisions having the force of law, in Patiala State on the said day shall apply, mutatis mutandis, to the territories of the State and all laws in force in the other Covenanting States immediately before that day shall cease to have effect.

8. The argument of the Learned Counsel for the respondents is that the Roznamcha Order in question ceased to have effect from the appointed day, which was 5th day of Bhadon, 2005 Bk., and that after that date the petitioner had no right under which he could claim exemption from water rates for the use of canal water.

It has been pointed out above that the said Roznamcha Order is a personal law granting a right of property to the use of canal water free of any dues to S. Bishan Singh and his successors, one of whom is the petitioner. Maxwell, Tenth Edition at page 176 says:

It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general Act is to be construed as not repealing a particular one. that is, one directed towards a special object or a special class of objects. A general later law does not abrogate an earlier special one by mere implication.

Then at page 180 the same author goes on to say-

Personal Acts and local customs affecting only certain persons in their rights, privileges, or property, offer other illustrations of the rule that special enactments are unaffected by the general words of a more general enactment.

It is clear that Sub-section (1) of S. 3 of the Patiala & East Punjab States Union General Provisions (Administration) Ordinance, 2005 Bk. (Ordinance No. XVI of 2005 Bk.) does not abrogate the personal law made by the Ruler of former Nabha State in favour of S. Bishan Singh and his successors. Therefore, the contention on behalf of the respondents that personal law of the petitioner has been repealed or abrogated by S. 3(1) of Ordinance No. XVI of 2005 Bk. is untenable.

9. The last contention on behalf of the respondents is that when the Rulers of the former Covenanting States pooled their sovereignties and created a new sovereign in the Pepsu State, they surrendered their sovereignty to the new State and ceded their territories to that State. On such surrender of sovereignty and cession of territory to the new sovereign and the new State, the rights of a subject of a former Covenanting State against that State cannot be enforced by the subject in, the Courts of the new sovereign without recognition of those rights, by the new sovereign. Reliance is placed on two decisions of their Lordships of the Privy Council. In - "Hoani Te Heuheu Tukino v. Aotea District Maori Land Board". AIR 1941 P.C. 109 (B). Their Lordships have observed at page 113-

When a territory is acquired by a sovereign State for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal Courts. The right to enforce remains Only with the high contracting parties.

The other case is - "Asrar Ahmed v. Durgah Committee, Ajmer", AIR 1947 PC 1 (C), in which their Lordships have held that

where a State has been ceded by a Native Ruler to the British Government the rights which the inhabitants of that State enjoyed against its former ruler avail them nothing against the British Government and cannot be asserted in the Courts established by that Government except so far as they have been recognised by the new Sovereign Power. Such recognition may be by legislation or by agreement, expressed or implied.

10. It is not denied that there is no such recognition of the rights of the petitioner under the Roznamcha Order of the Ruler of former- Nabha State by legislation of the new sovereign in Pepsu State. Again there is no express agreement between the petitioner and the new sovereign recognizing those rights. The question is whether by implication an agreement can be read into the conduct of the parties whereby recognition of those rights has taken place?

The only factor which weighs in favour of the petitioner in this connection is the silence of the officers of the new sovereign in not demanding the water rates from the petitioner for the use of the canal water for irrigation purposes by him until 5-7-1952. There is no other factor from which any such implied, agreement between the petitioner and the new sovereign can be derived, excepting one other consideration that Ordinance No. XVI of 2005 Bk. has not repealed the

personal law in this behalf in favour of the petitioner. If it was the intention of the new sovereign to abrogate the rights of the petitioner, it was open to the new sovereign to expressly repeal the personal law in favour of the petitioner.

While laws in general of the former Covenanting States ceased to have effect, but not the personal laws relating to the rights, privileges and property of private individuals. This coupled with the fact that, the new sovereign or the officers of the new sovereign did not move to demand water rates from the petitioner for nearly four years after the formation of the new State is an indication of the implication that the new sovereign accepted the position as it was as regards the rights of the petitioner.

In para. 4 of the reply on behalf of the respondents it is stated that it was by inadvertence that no demand for water rates was made from the petitioner till the year 1950 and that the canal officer belonged to the village of the petitioner and he laboured under the impression that the petitioner was not liable to make any such payment. Even so the actual demand was not made until 5th July, 1952. In these circumstances, the conclusion is that by implication the new sovereign accepted the grant in favour of the petitioner, otherwise it would have moved to abrogate the personal law about the grant or to make a demand for water rates within a reasonable time of the formation of the new State. Thus the rights of the petitioner, as stated and explained above, are enforceable in the Courts of the new sovereign even upon the authority of their Lordships of the Privy Council.

11. It is now clear that the personal law in favour of the petitioner exempts him from demand for water rates of one Nal that was granted free to his father and his successors in perpetuity by the Ruler of the former Nabha State and the demand of the executive officers, the respondents, for such a water rate from the petitioner is contrary to that personal law of the petitioner. So the orders resulting in that demand being contrary to law cannot be maintained.

The petitioner has prayed for a writ of certiorari against respondents Nos. 1 and 2 quashing the illegal orders made by them in making a demand for water rates from him. The writ of certiorari applies to judicial or quasi-judicial acts but under Article 226 an order contrary to express law can be quashed. The Orders of respondents Nos. 1 and 2 regarding such a demand are, therefore, quashed and the respondents are prohibited from making such a demand from the petitioner. No order is made as to costs.