
(1969) 07 SC CK 0006

In the Supreme Court Of India

Case No : Civil Appeal No. 842 (N) of 1966

Sardar Malojirao Narsingh Rao Shitole

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-07-1969

Acts Referred:

Citation : (1970) JLJ 5 : (1970) MPLJ 231 : (1969) 2 UJ 455

Hon'ble Judges : M. B. Shah, J; G. K. Mitter, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mitter, J.—The question involved in this appeal from the judgment of the Madhya Pradesh High Court is the claim of the plaintiff - appellant to compensation for the loss of his right to levy customs duty as a jagirdar of the former State of Gwalior.

2. The plaintiff's jagir along with other jagirs was abolished by the Abolition of Jagirs Act, 1952 which gave him certain rights to compensation. The right in respect of which he claims compensation in this appeal was taken away by the Gwalior Durbar in the year 1948. It appears that by a Huzur Order dated June 23, 1909 the Ruler of the Gwalior State allowed the plaintiff's predecessor-in-interest to receive customs duty as from January 1, 1910 within the limits of his jagir. The appellant continued to collect such duties till January 3, 1948 on which date an order was published in the Gwalior Government Gazette prohibiting the collection of import and export duty within the jagirs by the jagirdars with immediate effect. The object of this appears to have been the abolition of double imposition of customs duty by the Gwalior State itself and the jagirdar within the state. By the said order of 1948 a Commission was appointed to investigate and report as to whether or not the jagirdars who incurred loss as a result of the order should be entitled to any compensation, and if so, to what extent. Before anything effective could be done, the state of Gwalior merged with the Madhya Bharat Union on April 22, 1948. On June 3 1948 the Government of Madhya

Bharat promulgated Ordinance I of 1948 to the effect that all laws, Ordinances, Acts, Rules, Regulations etc. having the force of law in any state which merged in Madhya Bharat should continue to remain in force until repealed or amended. The Government of Madhya Bharat promulgated another Ordinance (Ordinance VIII of 1948) banning the levy of customs duty in the United State of Madhya Bharat. This Ordinance came into force on August 18, 1948. This Ordinance was replaced by Act 47 of 1948. The record shows that question of allowing compensation to jagirdars for the loss of income from customs duty was agitated in the Assembly of Madhya Bharat but nothing tangible came out of it. On December 4, 1958 the jagirs were abolished by Act 28 of 1951. The plaintiff filed his suit on January 31, 1958 praying for a declaration that his right to levy customs duty had not been taken away and could not be taken away without compensation, and quantified his claim to compensation at Rs. 1,50,000/- up to December 4, 1952 and thereafter at the rate of Rs. 10,000/- per annum. The trial court dismissed his suit and this was upheld in appeal by the High Court.

3. It was urged by learned counsel for the appellant that his client had a cause of action against the State of Gwalior for cancellation of the right to levy of customs duty within the jagir. According to counsel it was incumbent on the State of Gwalior to grant compensation to the plaintiff for the right which was abolished and though the appellant's right was not a statutory right it was a right recognised by the common law. He even went to the length of suggesting that the Common Law of England was the law applicable to the State of Gwalior under the rules of justice, equity and good conscience and taking away of property even by the State of Gwalior had to be accompanied by payment of compensation. He argued further that with the abolition of the jagirs, the appellant was deprived finally of his right to levy and collect customs duty in his jagir. He referred us to certain dicta in *The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Dorbhanga and Ors.* (1) to the effect that when private property is taken pecuniary compensation must be paid and at pages 1008-1009 where on reference to the case of *Attorney-General v. De Koyser's Royal Hotel Ltd.*(2) it was said that

"the payment of compensation is an essential element of the valid exercise of the power to take.

In our view these observations do not help the appellant at all. The right to levy customs duty which the appellant claimed was based on a grant thereof by the Ruler of the Gwalior State and who was an absolute monarch and whose word was law. The right was given to the plaintiff's predecessor-in-interest not as a part of or incident to the part of the jagir but independently of it and it was within the Ruler's power to resume that grant whenever he thought fit to do so. The only question of compensation which could possibly arise would be so far as the State of Gwalior was concerned. If the appellant could establish such a claim his right to claim it from the Union of Madhya Bharat or the State of Madhya Pradesh would fall to be considered. Our attention was not drawn to any law

which gave a jagirdar the right to collect customs duty merely by the grant of the jagir. It is well known that the jagirdars had only such rights as were conferred upon them by the Ruler who had full powers of sovereignty within his realm. No question of the application of the common law of England arises in this case. We were not referred to any statement of law recognising the right of a British citizen to levy or claim customs duty. It cannot be denied that the Ruler of Gwalior State did contemplate that probably the jagirdars should receive some compensation but it was only out of compassion and not because of any lawful claim. The appellant could not possibly have claimed any compensation as of law if the Gwalior State had been in existence. His claim against the Union of Madhya Bharat had therefore no solid foundation. The disappearance of the State of the Union of Madhya Bharat and the merging of the State with Madhya Pradesh gave the appellant no right as against the new State. Section 96 of Act 47 of 1949 of the United State of Madhya Bharat reading :

"No Jagirdar or Istamurarder, his servant or any other person can collect duties on imports, exports or rahadari" did not affect the rights of the appellant at all so far as the levy of customs duty was concerned inasmuch as the same had been lost already. The plaintiff had lost it once for all by the Order of the Gwalior State in 1948.

4. In the result the appeal must be dismissed with costs.