
(1965) 12 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petns, No's. 18 and 19 of 1964

Shivkunwarbai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-12-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1966) JLJ 976 : (1967) MPLJ 79

Hon'ble Judges : V.R. Newaskar, J;P.K. Tare, J;H.R. Krishnan, J

Bench : Full Bench

Advocate : P.L. Mehta, for the Appellant; S.L. Dubey, Addl. Govt. Advocate, for the Respondent

Judgement

P.K. Tare, J.

This order shall also govern the disposal of Banu Viswanathsingh v. The State and Others Misc. Petn. No. 19 of 1964. Common question of facts and law are involved in both the petitions. Therefore, they can be disposed of by a common order.

In this petition under Articles 226 and 227 of the Constitution of India the Petitioner challenges the appellate order of the Collector, Jhabua, dated 7-4-1964 in Appeal No. 11/63-64 arising out of the order dated, 20-1-1964 passed by the Sub-Divisional Officer, Jhabua, termed as competent authority u/s 5 of the M.P. Government Premises (Eviction) Act. 1952 (XIV of 1952), in eviction case No. I-B-119 of 1962.

Eviction proceedings were instituted against the Petitioner and her predecessors in the years 1950, 1960 and 1961. But they were not carried to their logical conclusion and were dropped for reasons, which are not known from the material on record. The present proceedings for eviction were started some time in the year 1962 on the assumption that the premises constitute Government premises so as to attract the M.P. Government Premises (Eviction) Act, 1952, and the

Petitioner is a trespasser and in unauthorised occupation of the premises. The Sub-Divisional Officer passed an order of eviction and the same was affirmed by an order of the Collector. Hence this petition for writs of certiorari and mandamus for quashing the said orders and for restraining the Respondents from interfering with the Petitioner's possession.

It is necessary to take note of the earlier history relating to this property. His Highness Maharaja Udaisingh of Jhabua State had given a jagir to Paswanji Smt. Navratanbai who was not the recognised Maharani and who probably may be his wife or keep. This Navratanbai had purchased or constructed two houses with her own funds. After the death of his Highness Maharaja Udaisingh, His Highness Maharaja Dilipsingh became the successor ruler. At the time of integration of the Central India States into the United State of Gwalior, Indore and Malwa, His Highness Maharaja Dilipsingh was the ruler of Jhabua State. The present Petitioner Smt. Shivkunwarbai is the widow of Bapu Gordhansingh who was son of His Highness Maharaja Udaisingh from his mistress Paswanji Navratanbai. The then ruler before the integration of Jhabua State passed two orders which it is necessary to take note of in details. The legal implication of these two orders would have to be considered in the present writ petition.

His Highness Maharaja Udaisingh had another unrecognised wife or mistress, known as Paswanji Bhagirathibai from whom a son by name Bapu Ramsingh was born. The Petitioner Bapu Vishwanathsingh in the connected case is the son of Bapu Bamsingh.

Reverting to the present case, the ruler issued an extra-ordinary Gazette No. 8, dated 30-3-1948 (to be found at page 69 of the paper book) termed Huzur Order to the following effect:

It is hereby further declared that the immovable property mentioned in the enclosed list are the private property of the Ruler and the Ruling Family.

In the list item No. 6(f), he mentioned all the houses which were in the occupation of Paswanji Navratanbai.

The ruler also issued another order of 1-4-1948 to the following effect

(to be found at page 49 of the paper book):

R.F.-11(S).

Thus by the order, dated 30-3-1948, the ruler declared the property belonging to Paswanji Navaratanbai as his own property; and by the subsequent order, dated, 1-4-1948 he purported to grant the property to her as a life estate without any right of alienation or creation of an encumbrance. The jagir granted to Paswanji Navaratanbai had been forfeited in the year 1943 A.D.; and in view of that forfeiture a monthly allowance of Rs. 100 was made payable by the ruler. However by order dated 1-4-1948, it was made payable from the State treasury.

Similarly in the connected case, Maharaja Udaisingh had granted to Bapu

Ramsingh a Jagir known as Semliya Jagir. Maharaja Dilipsingh forfeited the same and passed a similar order granting cash allowance of Rs. 100. The property of Bapu Ramsingh was also declared to be personal property of the ruler. Identical order dated 30-3-1948 and 1-4-1948 are to be found at pages 66 and 46 of the paper book in the connected case. At this stage, it is also pertinent to note that at the time of integration when the then ruler, His Highness Maharaja Dilipsingh tried to claim the property of the Petitioner's predecessor as his personal property, the Political and External Department refused to release the same as the personal property of the ruler. Orders in that behalf had been passed by the Madhya Bharat Government, which are to be found at pages 74 and 71 of the paper book in both the cases. Thus the sequence of events was that although the property belonged to Navratanbai and Bapu Ramsingh respectively as personal property, the then ruler confiscated or forfeited the jagirs granted to them; and instead granted a cash allowance of Rs. 100 payable from the State treasury. The personal property of those persons was declared by the ruler to be his own property; but the same was however, granted by him as a life estate without power of alienation; and it was also contemplated that after the death of the grantee, the property would revert to the family of the ruler. However, the successor sovereign refused to recognise this property as the personal property of the ruler. The orders of the ruler, dated, 30-3-1948 and 1-4-1948 were evidently orders of forfeiture or confiscation which could be done by him at a time when he was all powerful and when there was no rule of the law existing in the Princely State and when the ruler's word was itself the law. As such, the question to be examined in the present writ petitions is whether this action of the ruler confiscating or forfeiting the personal property of Navratanbai or Bapu Ramsingh was a complete transaction resulting in a fait accompli, or it was inchoate at the time of the integration of the Princely States into the United State of Madhya Bharat and at the time of formation of the Part B State of Madhya Bharat pursuant to the enactment of the Constitution of India. If the action was inchoate, there could be no subsequent confiscation or forfeiture after the coming into force of the present Constitution.

In these cases, it is pertinent to note that throughout the Petitioners and their predecessors have been in possession of the property even before and after the year 1948. At no stage the former ruler of Jhabua State or the successor sovereign, namely, the Madhya Bharat State or the Union of India has been in possession of the property. On the other hand when a demand was made that the Public Works Department should repair houses, the State Engineer of the Jhabua State, by order, dated, 23-9-1948 (annexure B-7 to be found at page 27 of the paper book) informed Kesharbai (probably a tenant) that the administration had no control left over the houses in occupation of Navratanbai. It is also pertinent to note that the documents on record undoubtedly establish the possession and control of Navratanbai and of Bapu Ramsingh in the connected case throughout at all relevant times. The only defence of the Respondent has been that the property became the State property by virtue of

the orders, dated 30-3-1948 and 1-4-1948 passed by the then ruler of Jhabua State. Besides this no other justification has been forthcoming.

It is, therefore, necessary to examine the implications of the two orders passed by His Highness the Ruler of Jhabua. To ascertain whether they were legislative, judicial or executive in nature, it is not sufficient merely to assert that whatever the Ruler of an Indian State as a sovereign said or did was the law of the State. In this connection, I might refer to the latest pronouncements of their Lordships of the Supreme Court in some recent cases.

In *State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala*, , their Lordships had to consider a case where the Ex-Ruler of an integrated State had created certain rights in favour of the Respondent prior to integration. Their Lordships laid down that it would be the right of the successor sovereign to recognise or not to recognise such grant of rights subsequent to integration; and unless they were so recognised by the successor sovereign, the rights could not be enforced by the grantees in Municipal Courts. It may be pertinent to reproduce the observations of his Lordship, Ayyangar J. with which the majority of the Judges agreed. They are as under:

The problem next is to discover that which is "law" from that which is merely an executive order and this is by no means an easy one to solve. In the case of some States where there are rules which prescribe particular forms which the laws have to or generally take or where laws as distinguished from executive orders are issued bearing a defined nomenclature, there is not much difficulty. But the cases which have come up before this Court have shown that this is by no means the universal rule. In the case of the Sant State with which we are concerned it was not suggested that there was any particular formality or process which had to be observed in the promulgation of laws or any particular form which laws had to take or took or that they went by any particular nomenclature to distinguish them from executive or administrative orders. We have, therefore, to consider whether from the nature of the instrument its contents and its general effect whether the Tharay dated March 12, 1648 constitutes a law within Article 366 (10) and is therefore continued by Article 372 or whether it is merely an Executive grant or administrative order which might confer right but which without recognition by the Union or State Government cannot be enforced in the Municipal Courts of this country.

In *Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another*, , their Lordships reiterated the earlier view expressed in *State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala*, . Their Lordships made the following observations:

The same view has been recently expressed by Hidayatullah, Shah and Ayyangar, JJ., in the judgments respectively delivered by them in *State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala*, . Therefore, a close examination of the decisions on which Mr. Setalvad relies does not support his argument that this Court has

laid down a general proposition about the irrelevance or inapplicability of the well recognised distinction between legislative and executive acts in regard to the orders issued by absolute monarchs like the Raja of Dhenkanal in the present case. The true legal position is that whenever a dispute arises as to whether an order passed by an absolute monarch represents a legislative act and continues to remain operative by virtue of Clause 4(b) of the order, all relevant factors must be considered before the question is answered; the nature of the order, the scope and effect of its provisions, its general setting and context, the method adopted by the Ruler in promulgating legislative as distinguished from executive orders, these and other allied matters will have to be examined before the character of the order is judicially determined, and so, we are satisfied that Mr. Setalvad is not right in placing his argument as high as to say that the Sanad issued in favour of the Appellant by the Raja of Dhenkanal must be held to be law without considering the nature of the grant contained in it and other relevant circumstances and fact. We must, therefore proceed to examine these relevant facts.

In Union of India (UOI) and Others Vs. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. and Another, , their Lordships had to consider whether the exemption granted by the former Ruler of Gwalior State to the Respondent from payment of income tax was an existing law within the meaning of Article 372 of the Constitution of India. Their Lordships reiterated the earlier view of State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, and Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another, . Judging the two orders passed by the Ex-Ruler in the light of the pronouncement of their Lordships of the Supreme Court, it will be evident that by order, dated, 30-3-1948, the Ruler declared the property mentioned in the list as his own property and the property of his family. All houses which were in the occupation of Smt. Navratanbai or Bapu Ramsingh were thus declared to be the private property of the Ruler. By a further order, dated, 1-4-1948, the Ruler purported to grant the said property to Navratanbai and Bapu Ramsingh as a life estate for their life-time without any power of alienation or creation of an encumbrance. It was contemplated that after the life-time of Smt. Navaratanbai and Bapu Ramsingh the property would revert to the Ruler and his family. These two orders cannot be said to be either judicial or legislative in character. They were out and out executive orders, which were considered necessary in view of the fact that the Jagirs granted to the persons concerned by His Highness Udaisingh had been forfeited by the successor Ruler His Highness Dilipsingh. As such, the two orders were expropriatory and were in the nature of forfeiture or confiscation of the estate of the individuals concerned. The order, dated 1-4-1948 was in the nature of a re-grant after confiscating the estate. Thus the orders were purely executive in nature and they did not purport to have any legislative character.

Such orders passed by the previous Rulers, if they had been given effect to or carried out, in short, if they had become a fait accompli there would be nothing for the successor sovereign either to approve or disapprove or to recognise or

not to recognise. But if such orders had not become fait accompli, the successor sovereign would be required to recognise or not to recognise the same or to give effect to them or not to give effect to them. In the present cases, the question came up for consideration before the Political and External Department of the Madhya Bharat Government when it had to be considered as to what was the private property of the Rulers and which was the State property which would devolve on the successor sovereign. In this connection, it is to be noted that the Political and External Department of the Madhya Bharat Government, vide order, dated, 25-7-1949 (to be found at page 74 of the paper book of the present case and at page 71 of the connected case), refused to recognise forfeited property as the personal property of the Ex-Ruler.

Regarding this, the learned Government Advocate urged that the order of forfeiture or confiscation having been a fait accompli, the action of the successor sovereign in refusing to release such property as the private property of an Ex-Ruler would not indicate that the order of confiscation had not been given effect to. It is no doubt true that if everything had been carried out into effect, there would be nothing for the successor sovereign to do. But if matters remained inchoate and such executive orders of forfeiture or confiscation were not fully carried out, the successor sovereign would be required to approve or disapprove it, but in no case it would be able to pass an order of expropriation contrary to the provisions of the Constitution, which came into force with effect from 26-1-1950. In the present cases, it is clear that the two orders, passed by the Ex-Ruler were mere paper orders, which had not been carried into effect. The Ex-Ruler never dispossessed the persons concerned. On the other hand, he purported to pass an Ex-gratia order conferring the property as a life estate on the persons concerned; and further provided that after the death of the life grantees, the estate would revert to himself and his family. This would conclusively establish the inchoate nature of those two orders. Therefore, it is futile for the learned Government Advocates to urge that everything had been accomplished prior to the integration of smaller Central India States into the United State of Gwalior, Indore and Malwa, known as Madhya Bharat or the formation of Madhya Bharat as Part B State after the coming into force of the present Constitution. The provision relating to reversion of the property to the Ex-Ruler or his family would naturally come into effect after the coming into force of the present Constitution. It is to be noted that Smt. Navratnabai died on 2-9-1954, while Smt Shivkunwarbai's husband Bapu Gordhansingh died on 6-10-1958. Similarly in the connected case, Bapu Ramsingh died on 26-11-1956. Therefore, I am of opinion that the property did not vest in the former Ruler by virtue of the orders, dated, 30-3-1948 and 1-4-1948, as these executive orders were not carried out into effect and they remained inchoate. Smt. Navratnabai and Bapu Ramsingh were never dispossessed or were never divested of their title to the property. Such divestment could take place only after the executive orders confiscating the property had been carried out into effect prior to the integration of the Jhabua State with the United State of Madhya Bharat. That not having

been done, there was no question of approval or disapproval to be granted by the successor sovereign.

In this connection, it is interesting to note that the learned Government Advocate took up a stand, which would more or less be in the nature of approbation and reprobation. He wants this Court to hold that these two orders of the Ex-Ruler were *fait accompli* so far as the present Petitioners are concerned; but they remained *inchoate* so far as the successor sovereign was concerned. The suggestion is that the successor sovereign could either release the property in favour of the Ex-Ruler or refuse to do so. On such refusal, all property would naturally be the property devolving on the successor-State. I may observe that this is a very plausible and attractive argument to be advanced, but only to be rejected on a thoughtful consideration of the implications. If the two orders of the former Ruler had been a *fait accompli*, there was nothing for the successor Government to do. In that event, the property would revert to the former Ruler in pursuance of the order, dated, 1-4-1948, and it could not be claimed by the successor sovereign on any rational ground, whatsoever. This would be the implication of the two orders of the Ex- Ruler, if it be assumed that those orders of confiscation and regrant were a *fait accompli*. But I may further observe that things are just the contrary of what the learned Government Advocate would have this Court to assume. This only confirms my impression that the orders remained *inchoate*; they were mere paper orders, which had not been carried out and which were passed at the last stages of the waning powers of the Ex. Ruler. They could only come up for consideration before the successor sovereign because they were *inchoate* and they could not be approved or disapproved, if they had been a *fait accompli*. This, in my opinion, would be the position with reference to the question whether the property vested in the successor sovereign pursuant to integration of Central India States into the United State of Gwalior, Indore and Malwa and the subsequent formation of Madhya Bharat as Part B-State and the formation of the present Madhya Pradesh after the reorganisation of States. I might not have been inclined to express an opinion on this aspect but for the fact that the question of the legal effect of the two orders passed by the former Ruler was pointedly argued and those two orders alone have been the basis of the Respondents' claim to act under the provisions of the Government Premises (Eviction) Act, 1952. I might have reserved that question for decision in a properly constituted suit. But the question having been pointedly raised in the present proceedings, I have no option except to express that the claim of the Respondent on the basis of the two orders passed by the Ex-Ruler is not only belated after prior retreats in the years 1950, 1960 and 1961, but a baseless claim without any foundation. After the enactment of the Constitution, such high-handed and arbitrary orders of confiscation of property by the Ex-Rulers at their whim and sweetwill have evidently no place in the scheme of the rule of the law established by our Constitution. Therefore, it can be assumed safely that the successor sovereign in all propriety, fairness and sense of justice refused to recognise the same on the premises that they were *inchoate* and not *fait*

accompli.

The action of the Respondent in rejecting the application of Smt. Kesarbai and in asking her to approach the owner, namely, Smt. Navratanbai would be consistent with either of the theories, namely, that the State had nothing to do with that property and that the person aggrieved should approach the owner for getting any repairs effected. Similarly, it could also be consistent with the fact that the successor sovereign had approved of the two orders passed by the former Ruler of Jhabua State. But in that event, if the subsequent order, dated, 1-4-1948 be deemed to have been approved of, then the property would revert to the Ruler and not vest in the successor sovereign. The reversion would naturally be after the enactment of the Constitution consequent upon the death of the life grantee. The two orders being inchoate and not a fait accompli, there could be no expropriation after the Constitution. The argument of the learned Government Advocate leads us into a vicious circle involving premises which would imply deprivation of property not in accordance with law. In either view, whether the two orders of the Ex-Ruler were a fait accompli or were inchoate, the property could not devolve on the successor sovereign and vest in it by virtue of the instrument of accession or any subsequent enactments including the Constitution of India. To put it in short, if the orders of the Ex-Ruler were a fait accompli, the property would revert to the Ex-Ruler after the death of the life grantee. The reversion being post Constitution would not be operative as a valid act of a former ruler, the then sovereign. If the orders were not a fait accompli, the executive order of confiscation of estate not being a completed act, there could be no confiscation after the enactment of the Constitution. In that event, the position would be that the property would remain where it was; and in no case could it vest in the successor sovereign. As it never vested in the former Ruler, if it vested in the former Ruler or in the former Princely State, then alone the successor sovereign would be able to pass an order in respect of such property whether it would devolve on the successor sovereign or would be released in favour of former Ruler. Thus the claim of the Respondent that the property devolved on the successor sovereign would be a wholly baseless and untenable claim in any view of the matter.

It is also interesting to note the attitude of the Government towards the said property or the other property forfeited by the then Ruler. In the present case, Navratanbai had made a representation to the Raj Pramukh of the Madhya Bharat Union (page 26 of the paper book) that her property had been unlawfully enlisted as private property by the Ex-Ruler. One Eesarbai had applied to the State Engineer of the Public Works Department of Jhabua State that the houses in occupation of Smt. Navratanbai be got repaired by the administration. The State Engineer, as per reply, dated, 23-9-1948 (paper book-page 27), stated that the administration had no control over the property and the Public Works Department would not effect any repairs. This Kesarbai further made a representation to the State Government of Madhya Bharat; and by reply, dated, 3.9.1951 (Paper Book page 29) the Government intimated that necessary action

could be taken against the house-owner and the Public Works Department was in no way concerned with the house. Thus even after the enactment of the Constitution of India, the Madhya Bharat Government disclaimed any interest in the property. But somehow the District Authorities made attempts for evicting the occupants under the provisions of the Madhya Bharat Public Premises Eviction and Recovery of Rent Act, 1951, as also under the M.P. Government Premises (Eviction) Act, 1952. After earlier retreats in the years 1950 and 1960, the present proceedings were instituted by the District authorities in the year 1962, u/s 3 of the Madhya Pradesh Government Premises (Eviction) Act, 1952. Sub-section (b) of Section 2 defines "Government premises" to mean any premises belonging to or taken on lease or requisitioned by the State Government. In the present cases, it is only the first phrase that is sought to be invoked, thereby meaning that the premises belonged to the Government.

The Learned Counsel for the Petitioners urged that the provisions of Section 3 of the M.P. Government Premises (Eviction) Act, 1952 could not at all be resorted to as the premises have never been Government premises. In the alternative, it is urged that there being a disputed question of title, the provisions of the Act cannot be resorted to by the competent authority. In this connection, it is to be noted that as observed by a Division Bench of this Court in *George Solomon Vs. "Competent Authority"* under Madhya Pradesh Govt. Premises Eviction Act, 1952 and *Another*, the proceedings under the Act are summary in nature. In that case, the vires of the Act had been upheld by the Division Bench and it was remarked that the provisions thereof did not contravene Article 14 of the Constitution. Of course, the question whether a question of disputed title can be gone into in such summary proceedings was not at all for consideration before the Division Bench. The said Division Bench case was followed by another Division Bench of this Court in *Dulhanmal Hiranand v. Adam Bholu and Ors.* 1961 M P L J 1228; 1962 J L J 256, wherein the provisions of the M.B. Public Premises Eviction and Recovery of Rent Act, 1951 were challenged as unconstitutional on the contention that they were violative of Article 14 of the Constitution. That contention was negatived. It was also observed that the Petitioner had failed to make out any prima facie case of exercise of the prerogative powers as the premises were requisitioned premises which had been allotted. The Petitioner claimed to be in occupation with the consent of the allottee. But as there was no written permission of the Collector, the occupation of the Petitioner was held to be unauthorised. This case also does not directly decide the point whether disputed question of title can be gone into in such summary proceedings. The point is also not covered by the other case cited at the Bar, namely, the Division Bench case of *Satish Chander and Another Vs. Delhi Improvement Trust, etc.*, wherein certain provisions of the Government Premises (Eviction) Act, 1952 were held to be unconstitutional as being violative of Article 19(1)(f) of the Constitution, which were not saved by Article 19 (5) of the same.

Another Division Bench of the Punjab High Court in *Hari Kishen Das and Another Vs. Union of India (UOI) and Others*, had to consider the constitutionality of

Sections 4 and 9 of the Public Premises (Eviction of Unauthorised Occupants) Act No. 32 of 1958, which was enacted after the earlier Act, namely, Government Premises (Eviction) Act, 1952 had been declared void and inoperative. The Division Bench held the provisions of the new Act to be constitutional and also observed that even if a question of disputed title might arise out of the issue of a notice u/s 4 by a State Officer, the effected person would have an opportunity to present his case and the dispute could be properly adjudicated upon before any final action was taken u/s 5 of the Act. Therefore, the learned Judge held that even a disputed question of title could be adjudicated upon in the summary proceedings.

A Full Bench of the Punjab High Court in the *The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another*, had to consider the constitutionality of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act No. 31 of 1959. The learned Judges held that the provisions of the Act were not violative of Article 14 or Article 19 (1) (f) of the Constitution. The Full Bench approved of the earlier Division Bench case of *Hari Kishen Das and Another Vs. Union of India (UOI) and Others*, by observing that the Act was similar to the Central Act which provided for an elaborate procedure wherein the person would have a full opportunity of proving his case. Thus by implication, the Full Bench by approving of the earlier Division Bench case, held that even a disputed question of title could be gone into such summary proceedings.

It is not necessary for me to go into the question whether a disputed question of title could be gone into in such summary proceedings. Generally there is an accepted principle that disputed questions of title should not be gone into in summary proceedings and the summary enquiry ought to be confined to the specific provisions made in the particular enactment. In the present cases, the Petitioners have undoubtedly made out a *prima facie* case for the exercise of prerogative powers of this Court by showing that the claim of the Respondent about the premises being Government premises was an untenable one from any point of view; and for that reason the provisions of the Government Premises Eviction Act, 1952 could not be resorted to. I have already indicated earlier that the Respondent would have no semblance of a claim or a title to the property whether the two orders of the Ex-Ruler be considered to be a *fail accompli* or an *inchoate* action.

In the present cases, I find that the premises not being Government Premises, *prima facie* the provisions of the Government Premises Eviction Act, 1952 could not at all be invoked. The authorities had no power to evict the Petitioners under that Act. In the alternative, I would observe that the Petitioners having a *prima facie* case on the question of title, it would be for the Respondent to establish its title by properly resorting to the legal remedies available under the law, and not to resort to a summary remedy under the Act. The competent authority and the Appellate Tribunal were clearly in error in failing to interpret the legal implications of the orders passed by the Ex-Ruler. The appellate Tribunal was also

in error in holding that the Petitioner having accepted the order of 1-4-1918 passed by the Ruler, would be precluded from challenging it. In fact, what was accepted by the Petitioner was only the grant of cash allowance of Rs. 100 in lieu of forfeiture of the Jagir. As regards the other part of the order relating to the forfeiture of the personal property, the Petitioner had made representations to the successor-Government. As such, they never accepted the order of forfeiture of personal property after the integration of the Princely State of Jhabua in the United State of Madhya Bharat. To conclude, I am of opinion that the orders of the competent authority and the Appellate Tribunal cannot be sustained in law and they are liable to be quashed by issuing of writ of certiorari. Further, I am of opinion that a writ of mandamus ought to be granted to the respective Petitioners directing that the Respondents shall be restrained from evicting the Petitioners in summary proceeding unless they resort to the remedy of establishing the title of the State in accordance with law. Therefore, the petitions succeed and are accordingly allowed with costs. Counsel's fee in each case Rs. 100. The security deposit be refunded to the respective Petitioners.

Krishnan, J.

I have had the benefit of a study of my learned brother's judgment deciding that the orders of the competent authority and appellate tribunal should be quashed by a writ of certiorari, and further that the Government should be directed by a writ of mandamus not to evict the Petitioners from the respective houses till it establishes its title in a regular civil Court. I would respectfully disagree and record my opinion that the orders of the competent authority and of the appellate tribunal confirming it are not defective for want jurisdiction, and as in my view, Government's title to the house is clear and indubitable, it cannot be restrained by any direction from proceeding with the eviction under the Madhya Pradesh Government Premises (Eviction) Act, 1952 the present occupants who are no more than squatters after the death of the original grantees who had been given only a premises to stay in the premises during their life-time. Whether it was a mere licence or even a life interest it spent itself on the death of the grantee.

Since both the petitions arise out of similar facts and the controversial issues are identical it is necessary only to refer to the facts as they would be applicable to both the cases: nor do I find necessary to recount the facts once over again because they have been set out in detail in my learned brother's judgment and I am in full agreement with them as far as they are facts though I disagree as to the interpretation.

The legal position as laid down in Articles 366 and 372 and in the interpretation given in State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, , Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another, and Union of India (UOI) and Others Vs. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. and Another, is that the Rulers of the former States in the instant case the ruler of Jhabua had before their accession full powers to make executive orders, or as for

that matter general orders of the nature of laws, providing for their dependents in a manner they considered best, and revoking the grants made by themselves or the older rulers. In the instant cases the Petitioners' predecessors in interest were dependents of the Ruler being the descendants of the mistresses of "Paswanjis" of one of the older Rulers. From time to time the "Paswanji" and their descendants had been given Jagirs, and residences. The orders we are concerned with were made on 1-4-1948 at time when he was the absolute ruler. Even if we assume that by this order he took back some properties his predecessor ruler had given to the "Paswanjis" descendants, still there being no Article 31 or similar law at that time, Courts are not competent to question their legality. In the instant case the orders provided firstly that these dependants should get an allowance of Rs. 100 per month out of the treasury and not in the form of any jagir; we are not in these proceedings dealing with this part of the allowance. Along with it there was an order that the houses they occupied had become the property of Durbar, the respective occupants were named and given permission to stay there during their life-time. It was a combined deal completely defining what the "Paswanjis" descendants were to get from the State. In my opinion this Court is not called upon either to pronounce upon the sufficiency or otherwise of the maintenance allowance, or the validity of the order in the light of subsequent post-Constitution law. If the Maharaja at that time had made it 50 or nothing and no permission at all to stay in any house owned by him still it would have been valid.

All this is accepted in my learned brother's judgment, but he feels that this Court is competent to interfere because in his view the matter had not been "finally settled" and the position was "inchoate" and the order was only "a paper order." With that I would respectfully disagree. Whenever transfers and disposals are made of immovable property or charges or licences are created there is always an element of what might be called "symbolism" for want of any other appropriate word. No title or right or charge or licence in immovable property can be rolled up like a carpet and put into the hands of the grantee. But conditions may be clearly laid down and if they are final in their nature there is nothing in the instant case, for example, there is nothing uncertain or inchoate about the orders that the occupants at that time shall have no more interest in the houses than a licence (or even if we call it so a right) to stay there during their life-time. If we choose to call this "property" in the general sense, it makes no difference. If after the commencement of the Constitution, the Government seeks to interfere with this right, that is, the permission or right to live in these buildings during the grantee's lifetime this would give the owner a claim for compensation. In fact there have been dozens of reported cases where certain limited rights granted by the Rulers of the erstwhile States have been sought to be interfered with by the State Governments after the Constitution came into force, and Courts have actually considered if there should be Compensation. But in the instant case Government is not interfering with what the Ruler had granted, namely, the right to live in these premises during the life-time of the

occupants. As long as those grantees were alive Government did not try to evict them and did not take any steps under the Madhya Pradesh Government Premises (Eviction) Act. They are doing so only after they are dead, and the licence or right is no more in existence.

I do not agree that the decision by the Ruler in 1948 made before the accession of the State and embodied in the orders was not a *fait accompli*. No doubt even after that order the grantees continued staying in the houses; but it was in a new Capacity, which was made perfectly clear to them. Before the order they stayed on in the houses on what might be called an inchoate title. But there after the order they stayed only by virtue of the permission granted by the Ruler, permission in other words to stay there during their life-time. I am even prepared to consider it as a "property" in a general sense, namely, a right to stay during the life. time. But nobody has deprived or is seeking to deprive the grantees of this right. The present steps are against their successors-in-interest after their death, in other words, after that "property", if one should call it so, has ceased to exist, and had spent itself along with the life of the grantees. I fail to understand why such a position should be called inchoate

In analogy from a happenings that this is extremely common in these parts will clarify my meaning. It is quite usual in this part of the country for the owners of immovable property to transfer by sale or mortgage and then by a separate agreement with the transferee-purchaser or mortgagee become their tenants. In effect the transferor whether he is a vendor or a mortgagee does not vacate the property at all; he continues to stay on but in a new capacity about which there is no doubt. He will not be heard to say because of it that the transfer was inchoate or that it was a "paper" transaction. In the same manner the two grantees though they continued to stay on in the houses after the order of the Ruler, were doing so in an altogether new capacity. Whatever the title they might have had before the Ruler's order after it they had no more than a right or a permission to stay on during their life time. These the successor-Government has respected and has taken steps to get the successors of the grantees evicted only after the life interest, if one may call it so, had spent itself. The basis of my reasoning is that for one thing, the order of the Ruler at that time was final; for another, whatever had been granted by that order has been enjoyed by the grantees during their life-time exactly in the manner in which they were meant to be enjoyed. The present Government by taking steps under the Madhya Pradesh Government Premises (Eviction) Act is not interfering with any "property" the late Ruler might have granted but is only taking steps to remove the squatters from property to which in terms of the Ruler's order it has got title.

Whether or not soon after the accession these were listed as the private properties of the Ruler or the properties of the Government is in my opinion a question that does not arise here. The question that arises here is whether there was anything incomplete or inchoate in the order of the Ruler or whether it was a *fait accompli*. The Ruler having acquired the reversion to these houses, that

property went into the common pool which was divided by the Government into the properties of the new State on the one hand and the properties of the Ruler on the other. That is a matter with which these grantees can have no concern. Their interest is in showing that while the Ruler reduced or defined their interest in the houses he left something still uncertain or incomplete so that they could bring it before the Courts after the Constitution. It is of no avail to them to urge that there was some uncertainty as to whether the reversion to these houses should go either to the Rulers or to the State. As it was, they have not figured in the properties given to the Ruler so that they are the properties of the new Government. It is therefore clear that the Ruler of the Jhabua State had while he was still the absolute Ruler clearly ordered that in these houses the grantees at that time should have only the right of residence till their death after which they should become State properties. If the Courts feel themselves competent to interfere with the final and complete disposition of properties made by the Rulers before their succession there would be no end to confusion and injustice. We may find ourselves called upon to reopen grants or forfeitures made by the East India Company, or even the Moghuls or the Guptas. The only cases in which such intervention can be envisaged are those where the decision concerned are patently incomplete, and the Rulers themselves have left something indefinite and uncertain for subsequent reconsideration. That is not the position here.

Coming to the question of propriety of invoking Government Premises (Eviction) Act, case-law is practically unanimous at present. When there is a bona fide dispute regarding the title or when Government's own title is doubtful or uncertain, then it would be inexpedient for Government to take steps under that Act, one of the conditions of its application being that there should be clear title in Government. But it is difficult to see how it can be contended that Government's title is not clear in this case, or that it should go to the law Courts with a civil suit for a declaration. In terms of the order of the Maharaja the moment the occupant of that time died the property reverted to the Government. It is just a case of the grant for a life-time and the title automatically reverting to the grantor, or the successor Government. In fact, I have used the word "reversions" loosely as if they are limited grants, it would be more appropriate to call it a licence so that on designation of the duration the licence automatically lapses. But whether we call it a licence or permission or even a limited grant with a reversion to the grantor the result is the same. Government has acquired title and after the death of the grantee the new occupant is nothing more than a squatter. It is exactly for the removal of the squatters of this type—those who have no title that the Act has been enacted. When Courts have said that the Act may not be invoked when there is a question of title, they always meant some controversy in which the occupant could put up a plausible claim what might be called an arguable case and not one as in the instant case, which is altogether a shadow. In my view any claim of the successors of the grantee to the property after the death of the latter is nothing more than a pretext.

For these reasons I would in disagreement with my learned brother dismiss these two petitions with costs of Rs. 100 (one hundred) payable to the opposite party, namely the Government of Madhya Pradesh.

[On account of the difference between Tare J. and Krishnan J. the matter was referred to Newaskar J. He recorded the following opinion.]

OPINION

Newaskar, J.

On a difference of opinion between the Judges constituting the Division Bench these two Miscellaneous Petitions No. 18 and 19 of 1961 have been placed before me as a third Judge.

The Petitioners Shivkunwarbai and Bapu Vishwanathsingh refer-able to these two petitions seek to challenge the orders, dated 28-1-1964 passed by the Sub-Divisional Officer, Jhabua, in his capacity as the competent authority u/s 5 of the Madhya Pradesh Government Premises (Eviction) Act, 1952 (XVI of 1952), which was confirmed in Appeal No. 11 of 1963-64 by the Collector, Jhabua, as being without jurisdiction.

Material facts are as below:

The Petitioner Shivkunwarbai is the widow of Bapu Gordhansingh, who was the son of Paswanji Navaratanbai, a mistress of Maharaja Udaisingh of Jhabua. There was another mistress known as Paswanji Bhagirathibai of Maharaja Udaisingh. Petitioner Bapu Ramsinghji was born of her. It is said that both Bapu Gordhansinghji and Bapu Ramsinghji were the sons of Maharaja Udaisingh through the Mistresses named above. Petitioner Vishwanathsingh is the son of Bapu Ramsinghji. Maharaja Udai-singhji during his life-time had conferred a Jagir grant of Movja Dholyavadh to Paswanji Navratanbai. Similar Jagir grant was made to Paswanji Bhagiratibai. This was known as Semlia Jagir. Besides the Jagir grants Navratanbai was in occupation of two houses and Petitioner Shivkunwarbai claimed that these two houses had been constructed by Navratanbai out of her own money and were not the property of the erstwhile State of Jhabu. The Petitioner Vishwanathsingh also is in occupation of another house situated on the college road Jhabua. According to him this house had been constructed by his father Bapu Ramsinghji in the year 1930-31 by his own money and was not the property of Jhabua State.

Maharaja Udaisingh died and was succeeded by Maharaja Dilipsingh, who by his order No. 1735 dated 23-9-1943 resumed the Jagir grants made by the late Highness and instead granted a monthly cash allowance of Rs. 100. They however continued to occupy the respective houses which were in their possession. This state of affairs continued till 30th of March 1948 i. e. a few months before the integration of Princely States of Central India into a single State known as Madhya Bharat. On that date His Highness Dilipsinghji passed the following order:

It is hereby farther declared that the immovable property mentioned in the enclosed list are the private property of the Ruler and the Ruling Family. All the villages comprised in the Jagirs assigned to Magi Saheba Gourniji (Amba Jagir) Her Highness Chowhanji (Khardu Jagir), and Maharaj Kumar Devendra Kumar Singh (Wajela Bhagor Jagir), shall always be considered as Khasgi Jagirs and on their falling vacant they shall be for ever at the disposal of His Highness.

In the list that was enclosed with this order items Nos. 6 (e) and (f) were mentioned as, (e) All houses which are occupied by Bapu Ramsingh, (f) All houses which are in the occupancy of Navratanbai.

Thus the order mentioned these houses as included in the list of the private property of the "Ruler and the Ruling Family". This was followed by another order on the following day in the form of letter addressed to Paswanji Navratanbai and also to Bapu Ramsingh. It referred to the earlier order of resumption of their respective Jagirs and grant of cash allowance of Rs. 100 per month by Darbar Parwana Nos. 1735 and 1733 dated 23-9-1943 and informed them that since a new administrative set up was in the offing with regard to the Princely States in Malwa and there was likelihood of the percentage of Civil list: (Privy purse) being curtailed they would thence forward receive the amount of their respective allowances from the State Treasury every month.

The order further mentioned in the case of Navratanbai as below:

You will continue to reside in the big houses of Khasgi (Private property of the Ruler) in which you are now residing. After you they will be taken possession of by Hazur (His Highness). You will have no right to sell, mortgage or create any kind of charge on them. Dated 1-4-1948.

Similar order was passed in the case of Bapu Ramsingh with this modification that in his case the order referred to one house instead of two. On 29-6-1948 the State of Jhabua merged into Madhya Bharat. The private properties of the Ruler were settled by the Government of India in the Ministry of States before 25th July 1949. On the last mentioned date a Memorandum No. 29/2/ 128/48 Indore dated 25th July 1948 was issued under the signatures of the Deputy Secretary to Government of Madhya Bharat to the Secretary P.W.D. Superintending Engineers etc, Commissioners, Collectors, and other departmental heads and authorities. Paragraphs 1 and 2 of the Memorandum are as below:

1 The Government of India in the Ministry of States have now settled private properties of Rulers of integrating States in Madhya Bharat. A printed copy of the list is enclosed Each Department concerned has now to take action first for handing over of the property to the Ruler concerned unless it is already in his possession, and secondly to divest Government of all responsibility for its maintenance and for expenditure on it.

Before the formation of Madhya Bharat, there was not especially in some of, the smaller States, a clear distinction between the Ruler's and State property. Each

Department has also to see, therefore, that no property out of properties belonging to the Ruler and/or the State before the formation of Madhya Bharat is left with the Ruler excepting the property in the enclosed list.

The enclosed list did not include the houses of either of the two Petitioners.

The Collector, Jhabua started proceedings with reference to the houses in the possession of Navratanbai and Bapu Ramsinghji in the year 1950. The resisted contending that the said houses were not the private property of the ex-ruler of Jhabua but were the private property of the respective occupants and the Madhya Bharat had no right to deprive them of their possession. These proceedings were later dropped." Once again the Collector, Jhabua issued letters one to each of the two Petitioners dated 17-3-1960 and 23-3-1990 calling upon them to hand over possession of the houses in their possession. Shiv-kunwarbai claimed the two houses as the widow of Bapu Gordhansinghji son of Navratanbai on the ground that they were the personal property of Navratanbai and had devolved on her death upon her husband and on her husband's death upon her, whereas Bapu Vishwanathsingh claimed the house in his possession as being the personal property of his father Bamsingh which devolved upon him as his son. Each claimed to be in uninterrupted possession of the respective houses in their charge since the time of the construction. The proceedings consequent upon these letters were dropped once more.

On 16-1-1961 proceedings were once again instituted against Shivkunwarbai and Bapu Vishwanathsingh this time u/s 3 of the Madhya Pradesh Government Premises (Eviction) Act in the Court of Sub-Divisional Officer, Jhabua. The Petitioners again contested the proceedings. They were later withdrawn due to formal defects.

On 30-4-1962 the Executive Engineer, District Dhar submitted applications u/s 3 read with Section 4 of the Madhya Pradesh Government Premises (Eviction) Act against either of the two Petitioners before the Sub-Divisional Officer, Jhabua, who was constituted competent authority under the said Act. By these petitions possession was claimed on behalf of the State on the ground that the said houses were Government Premises and the Petitioners could be required to vacate the same under the orders of the said competent authority on the ground that they were in occupation without having any right to do so.

The Petitioner resisted contending as before that the houses in their possession belonged to them and did not belong to the State of Madhya Bharat or the State of Madhya Pradesh.

The Sub-Divisional Officer by his order dated 28-1-1964 overruled the contentions of the Petitioners and ordered them to vacate. The Petitioners preferred appeals to the Collector, Jhabua in his capacity as the appellate authority under the Act. These appeals were dismissed by him by his order dated 7-4-1964.

The present petitions Nos. 18 and 19 of 1964 are thereupon filed in this Court. The principal grounds on which the petitions are based are:

1. That on true construction of the Madhya Pradesh Government, Premises (Eviction) Act, 1952, the Act is applicable to such Premises as are admittedly Government Premises and not to those with reference to which there is any dispute.

That if the Act, on its true construction empowers the competent authority to pass orders with reference to immovable property as to which bona fide dispute as to title and right to possess exists, it would be void and unconstitutional as it would trench upon the constitutional guarantee under Articles 14 and 19 and of the Constitution of India.

That assuming that the competent authority and the appellate authority had jurisdiction to determine the disputed ownership as between the State and the private individual as special tribunals created under the Act they had exercised the power against the principles of natural justice.

These petitions were opposed by the State of Madhya Pradesh, the Executive Engineer, District Dhar, Sub-Divisional Officer, Jhabua and Collector, Jhabua.

In the return submitted on behalf of the State it was denied that the houses in question had been constructed by Navratanbai and Bapu Ram-singh as alleged in the two petitions. They asserted that the houses belonged to the Ruler and both Navratanbai and Bapu Ramsingh were allowed to reside and enjoy the usufruct of the houses in their possession for their life by the order of the Ruler dated 1-4-1948. The order defined the rights which they had in those houses. That order being of the Ruler was not and could not have been assailed by either of them.

Replying to the grounds of attack it was asserted that the premises in question properly fall within the ambit of Government Premises (Eviction) Act, 1952, and consequently both the Sub-Divisional Officer and the Collector as the appellate authority had jurisdiction to pass orders u/s 3 of the Act in spite of any dispute as to title being raised by the Petitioners.

The power conferred upon the competent authority to direct eviction of a person in possession of the Government premises is not violative of Articles 14 or 19 (f) of the Constitution. It was also asserted that the orders of the Ruler dated 30-3-1948 and 1-4-1948 were laws and are binding upon Petitioners as much as upon the successor-State. Since the order dated 1-4-1948 gave only limited right to Navratanbai and Bapu Ramsingh of residence and enjoyment of houses in question for life, the property reverted to the State on their death and the Petitioners were no better than trespassers.

On the basis of these respective contentions Tare J. held that the orders of the Ruler dated 30.3.1948 and 1-4-1948 are not law. They are executive orders and whether they had become fait accompli or otherwise the successor-State had no

title to the disputed premises. The premises were therefore not Government premises and neither the competent authority nor the appellate authority had power u/s 3 of the Act to require the Petitioners to vacate.

Krishnan J, on the other hand held that the decision of the Ruler embodied in the orders dated 30-3-1948 and 1-4-1948 had become fait accompli. Before the orders Navratanbai and Bapu Ramsingh lived in the houses on the basis of their inchoate title. But after the orders they stayed by reason of permission granted by the Ruler to stay there during their life-time. The learned Judge further held:

The Ruler having acquired the reversion to these houses, that property went into the common pool which was divided by the Government into the properties of the new State on the one hand and the properties of the Ruler on the other.

According to him the title of the State Government was clear and consequently the competent authority had rightly required the Petitioners to vacate the houses in exercise of his power u/s 3 of the Act.

In order to consider and determine these petitions in view of the respective contentions of the parties as indicated above, I would formulate the following points:

1. Whether the orders dated 30-3-1948 and 1-4-1948 of the Maharaja of Jhabua constitute laws which can well be held to have been continued, as existing law within the meaning of Article 366(10) of the Constitution of India, by Article 372 of the Constitution, or are merely executive or administrative orders of the Ruler.

If the said orders are executive or administrative in nature whether the same had been fully carried out involving total deprivation of title of Navratanbai and Bapu Ramsingh in the houses in their possession and subsequent conferral of life interest upon them!

Whether the competent authority under the Madhya Pradesh Government Premises (Eviction) Act, 1952, had sufficient power and jurisdiction to determine the question as to the premises referable to these proceedings being Government Premises or the premises of the Petitioner?

Is this question a jurisdictional fact? if so, is the question rightly decided?

Is the competent authority as a tribunal under the Madhya Pradesh Government Premises (Eviction) Act, 1952, empowered to determine the disputed question as to the title of the State in respect of the premises?

Assuming that the competent authority was so empowered, was it open for it to determine the dispute as to title merely on the basis of the orders of the Ruler dated 30-3-1948 and 1-4-1948 without taking into account all the materials bearing on the question of the title of Navratanbai and Bapu Ramsingh to the houses in question which the parties might desire to place?

Can this Court in exercise of its power under Articles 226 and 227 of the

Constitution, examine the legality of these orders on the ground that the competent authority under the Madhya Pradesh Government Premises (Eviction) Act, 1952 and the Appellate Authority constituted thereunder had failed to act within the bounds of their authority?

Point No. 1: Before dealing with this point on merits it will be useful to indicate the distinction made in decided cases between orders which are legislative in nature and those which are executive.

In *Maharaja Shree Umaid Mills Ltd. Vs. Union of India (UOI)*, their Lordships of the Supreme Court after referring to their earlier decisions in *Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others*, and also to *Promod Chandra Deb and Others Vs. The State of Orissa and Others*, observed in para. 13, page 958 of the report as under:

In our view, none of the aforesaid decisions go [the extent of laying down that any and every order of a Sovereign Ruler who combines himself all functions must be treated as law irrespective of the nature or character of the order passed. We think that the true nature of the order must be taken into consideration, and the order to be law must have the characteristics of law, that is of a binding rule of conduct as the expression of the will of the sovereign which does not derive its authority from mere consensus of mind of two parties entering into a bargain. It is not necessary for this purpose to go into theories of legal philosophy or to define law. However law may be defined, be it the command of the supreme legislature as some jurists have put it or be it a "body of rules laid down for the determination of legal rights and duties which Courts recognise"..

There their Lordships were concerned with an agreement of the Ruler of Jodhpur State and the point pressed was that the agreement being the command of the sovereign was itself law. Their Lordships rejected that contention in the context in which the agreement was made. The same view was reiterated in a later decision of the Supreme Court reported in *Bengal Nagpur Cotton Mills Vs. Board of Revenue, Madhya Pradesh and Others*, .

In *State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala*, the Supreme Court were concerned with the question whether the resolution or Tharao dated 12-3-1948 passed by the Maharana of Sant State which merged in the State of Bombay, granting forest rights to holders of certain specified tenures was legislative in character and was law or was merely an executive order which it was competent for the succeeding State not to recognise by its executive order. It was held by the majority that it was not law but was a grant and consequently it was competent for the Government of Bombay to refuse to recognise the right by its executive order. These decisions were followed in *Govindrao Mahadik v. Krishnarao Mahadik* 1965 J L J 154. The question for consideration in that case was regarding an order passed by the Ex-Ruler of Gwalior State in the following terms:

Gujarish approved. This house really belongs to Major Sardar M.B. Mahadik and Sardar Angre issued the letter referred to above in contravention of my orders dated 26-10-1948. It is, therefore, hereby ordered that the house in question should be handed over to Major Sardar K.D. Mahadik, in whom the ownership is vested.

This order was held not to be law but merely an executive order declaring that the ownership of the disputed house vested in the Respondent. With reference to such order the Division Bench took the view as below:

If an order made during the regime of sovereign exercising absolute powers is enforced and fully given effect to, it would obviously be unnecessary to examine its true character. But what was sought in the present suit was the enforcement by the Municipal Courts of the successor-State of the order passed by the quondam Ruler of Gwalior. The position does not now admit of any doubt. Such an order can be enforced in the Municipal Court of the successor State only if the order is a law as distinguished from administrative or executive orders.

In *Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another*, it was observed by Gajendragadkar C.J. who delivered the leading judgment:

We do not think that the basic assumption made by Mr. Setalvad in presenting this argument is sound. It would be noticed that the basic assumption on which the argument is based is that in the case of an absolute monarch, there can be no distinction between executive and legislative orders. In other words, it is assumed that all orders which are passed by an absolute monarch (are) binding and it is idle to enquire whether they are executive or legislative in character, because no such distinction can be made in regard to orders issued by an absolute monarch. It is true that the legislative, executive and judicial powers are all vested in an absolute monarch; he is the source or fountain of all these powers and any order made by him would be binding within the territory under his Rule without examining the question as to whether it is legislative, executive or judicial; but though all the three powers are vested in the same individual that does not obliterate the difference in the character of those powers. The jurisprudential distinction between the legislative and the executive powers still remains, though for practical purposes, an examination about the character of these orders may serve no useful purpose. It is not as if where absolute monarchs have sway in their kingdoms the basic principles of jurisprudence which distinguish between the three categories of powers are inapplicable. A careful examination of the orders passed by an absolute monarch would disclose to a jurist whether the power exercised in a given case by issuing a given order is judicial, legislative, or executive, and the conclusion reached on jurisprudential grounds about the nature of the order and the source of power on which it is based would nevertheless be true and correct. That, indeed, is the approach which must be adopted in considering the question as to whether the grant in the present case is law within the meaning of Article 372 as well as Clause 4(b) of Order 31 of 1948; and so, *prima facie*, it does not seem sound to suggest that in

the case of an absolute monarch, that branch of jurisprudence which makes a distinction between three kinds of power is entirely inapplicable.

In dealing with this aspect of the matter it is hardly necessary to examine and decide what distinguishes a law from an executive order. A theoretical or academic discussion of this problem would not be necessary for our present purpose, because all that we are considering at this stage is whether or not it would be the character of the order, its provisions are possible to be considered by reference to context and its general setting whether it is a legislative order or an executive order. Though theorists may not find it easy to define a law as distinguished from executive orders, the main features and characteristics of law are: well recognised. Stated broadly, a law generally, is a body of rules which have been laid down for determining legal rights and legal obligations which are recognised by Courts. In that sense, a law can be distinguished from a grant; because in the case of a grant, the grantor and the grantee both agree about the making and the acceptance of the grant; not so in the case of law.

The learned C.J. after reviewing several decisions of the Supreme Court, some of which are referred to above, concluded-

The true legal position is that whenever a dispute arises as to whether an order passed by an absolute monarch represents a legislative act and continues to remain operative by virtue of Clause 4(b) of the order, all relevant factors must be considered before the question is answered; the nature of the order, the scope and effect of its provision, its general setting and context, the method adopted by the Ruler in promulgating legislative as distinguished from executive orders, these and other allied matters will have to be examined before the character of the order is judicially determined.

Bearing these principles in mind, I shall now proceed to examine the orders of the Maharaja of Jhabua dated 30-3-1948 and 1-4-1948.

The first of these orders were published in the Gazette dated 30-3-1948. It purported to declare that the immovable property in the list enclosed and published along with that declaratory order was the private property of the Ruler of Jhabua. This publication did not purport to make any law nor did it purport to decide judicially the dispute as to whether the houses in the occupation of Navratanbai and Bapu Ramsingh were the private property of the Ruler himself or is the property of those persons. The exact purpose for making this declaration appears to be that the question as to integration of the Princely States in the Central India was under consideration between the Government of India and Princely States. In that connection the question as to what should be left to the Ruler of a Princely State as his private property was also being considered. The Ruler of Jhabua, with a view to provide some basis for the settlement of the private property, made the aforesaid declaration. It was in the nature of a claim made by the Ruler that the properties in the list were his private properties. The list was later gone into by the Government of India and

the properties of the Petitioners were omitted from that list. Thus in the ultimate settlement these properties did not belong to the Maharaja.

The order dated 30-3-1948 then cannot be "law" because had that been so in the ultimate settlement these properties would have become the property of the Ruler Maharaja Dilipsinghji since the law of the erstwhile State which integrated to Madhya Bharat become the laws of the new State unless modified, altered or repealed by the Act of the State Legislature and later when the Constitution came into force. The laws of the pre-existing States became the existing laws under Article 366(10) of the Constitution and would have continued under Article 372 of the Constitution as laws. Such a position is moreover destructive of the stand of the State of Madhya Pradesh that the said properties become the properties of the succeeding State and did not continue as the private properties of the Ruler of Jhabua. The order dated 30-3-1948 of the Ruler is, therefore, not "law". It is also not a judicial determination of the dispute as to title between the Ruler and the Petitioner. This order is, therefore, nothing better than an executive order of a declaratory character.

The second order dated 1-4-1948 was in the nature of communication addressed to each of the Petitioner Navratanbai, and Ramsingh informing them that the cash allowances which they were being paid out of the civil list (Ruler's personal expenses) would thereafter be paid to them from the State Treasury. The reason for this change was stated to be that the percentage of civil list was 25 but in the coming arrangement regarding integration of the States in Malwa this percentage was likely to be reduced and it would be difficult to pay the cash allowances from his civil list. Then followed the statement that the Petitioners were in occupation of the houses belonging to "khasgi" (private or personal property of the Ruler as opposed to that of the State). They could continue to live in them till their life whereafter they would be taken possession of by the Ruler.

The underlying idea is that houses being the private and personal property of the Ruler would revert to his possession.

This statement involving assertion of fact cannot be read as "law". For if it were law then on integration it had to be respected by the State of Madhya Bharat by the Regulation of Government Act No. 1 of 1948 and there would have remained no scope for the Government of India to intervene and settle the private property of the Rulers so as to exclude these houses from the list of the private properties of the Rulers. The law in the absence of any legislation by the State of Madhya Bharat before the constitution would have continued as "law" under Article 372 of the Constitution of India as the existing law as defined in Article 366(10) of the Constitution of India. In that case there would remain no scope for the State to claim the houses as the "Government Premises" within the meaning of the term as defined in Section 2(b) of the Madhya Pradesh Government Premises (Eviction) Act, 1952.

It is thus clear that the communication of the Ruler addressed to the

predecessors of both the Petitioners dated 1-4-1948 is not law. It cannot be called judicial determination of the absolute title of the Ruler and the extent of the interest which the Petitioners were entitled to hold. In fact I would not call these communications as orders. They only purport to inform the Petitioner as to their incompetence to dispose of the houses by transferring or creating encumbrances on them as at the end of the life of each one of them the Ruler would reoccupy them. Even if they are taken to be executive orders, they clearly cannot be said to be fully carried out. Consequently the Petitioners could not be said to have lost their right with reference to them as against the State. In fact if the State seeks to call the houses in question as the Government premises on the basis of the last mentioned order, it cannot do so. For, if the successor-Government is taken to have recognised the order the Ruler would be entitled to claim them. In case the State of Madhya Bharat and later Madhya Pradesh had refused to recognise the same in view of the list of private property of the Ruler settled through Government of India which did not include these houses, it cannot afford proper basis for claiming the same as their property.

It thus appears to me to be clear that the orders of the Rulers dated 30-3-1948 and 1-4-1948 do not constitute either law or judicial determination of the question as to title to the three houses. They at the most, are executive in character and on their true construction the State cannot claim the houses in question as Government premises on the strength of these orders. First two questions are thus answered. This takes us to questions Nos. 3, 4 5 and 6.

Before I proceed to consider these questions at this stage it will be useful to give a brief resume of the Madhya Pradesh Government Premises (Eviction) Act, 1952 (Aot XVI of 1952).

The preamble of the Act shows that the Act is intended to provide for eviction of persons from Government Premises in certain circumstances and for matters connected therewith.

Section 2(b) defines "Government premises" as below:

In this Act, unless there is anything repugnant in the subject or context:

(b) "Government premises" means any premises belonging to or taken on lease or requisitioned by the State Government.

Material part of Section 3 of the Act is as below: "If the competent authority is satisfied:

(a)....

(b) That person is in unauthorised occupation of any Government premises.

The competent authority may, by notice served by post or otherwise order that that person as well as any other person who may be in occupation of the whole or any part of the premises shall vacate them within thirty days of the service of the notice.

Sub-section (4) of Section 3 of the Act is as below: "If any person refuses or fails to comply with an order made under Sub-section (1) or (3) the competent authority may, without prejudice to any action that may be taken u/s 9, evict that person from, and take possession of the premises, and may for that purpose use such force as may be necessary."

Section 4 of the Act further empowers the competent authority (a Gazetted officer appointed by the Collector) to assess damages on account of use and occupation of the premises in the unauthorised occupation of any person.

Section 5 of the Act provides for an appeal to the Collector against the order of the competent authority. The order passed in appeal, after calling for a report from the competent authority and after giving an opportunity to the Appellant to be heard, would under that section, become final.

Section 6 of the Act provides for bar of jurisdiction of civil Courts. It is in the following terms:

No order made by the Collector or the competent authority in the exercise of any power conferred by or under this Act shall be called in question in any Court and no injunction shall be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 7 of the Act provides for the Rule-making power of the Government for carrying out the purposes of the Act and particularly as to the form and manner of service of notice, procedure to be followed in taking possession, manner of assessing damages and the manner of preferring appeals and the procedure for hearing them.

It will thus be seen that the jurisdiction of the competent authority to order any person to vacate the premises in his occupation rests upon those premises being Government premises. This is consequently a jurisdictional fact. The competent authority cannot require a person to vacate the premises in exercise of the power u/s 3 of the Madhya Pradesh Government Premises (Eviction) Act if they are not Government premises. It is also clear that the competent authority, by erroneously holding any premises as Government premises cannot confer upon itself jurisdiction which it does not possess.

In *Rex v. Shoreditch Assessment Committee* (1910) 2 KBD 859 (880) it was observed:

No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction; such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise, subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it; it is a

contradistinction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will end pleasure such a tribunal would be authority 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; a Court with jurisdiction confined to the city of London cannot extend such jurisdiction by finding as a fact that Piccadilly Circus is in the ward of Chepe.

Thus even if the jurisdiction of the civil Court is barred u/s 6 of the Act it is competent for the High Court in exercise of its powers under Article 226 of the Constitution to examine whether the jurisdictional fact regarding the premises being Government premises have been rightly assumed to exist. If according to the view of the High Court there was no lawful basis for such assumption then it is competent for it to act in exercise of its powers under Article 226 of the Constitution for the issue of a writ of certiorari and quash the orders of the competent and appellate authority. The decisions of the Supreme Court reported in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, and *income tax Officer v. S.K. Habibullah* AIR 1962 SC 918 as also the decision *Pease v. Chaytor* (1863) 32 LJMC 121, support this principle.

In *Hari Kishen Das and Another Vs. Union of India (UOI) and Others*, , it was held by the Punjab High Court with reference to Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), that even a disputed question of title can be determined by the estate officer when he issues notice u/s 4 of the Act for an action u/s 5 of the Act. The Sigh Court there seems to have held that the conclusion, that the premises in question were public premises, was correct and did not involve an erroneous assumption, having a bearing on the jurisdictional fact, nor was it against the principles of natural justice.

Now in the present case the competent authority namely Sub-Divisional Officer, Jhabua held the premises Government premises on the strength of the order dated 1-4-1948. As already discussed earlier, on true construction of the said order, they do nob become the property of the State of Madhya Bharat merely because the Ruler claimed in his executive order dated 1-4-1948 that they belong to "khasgi" expressing his intention that on the death of the then occupants he would reoccupy them adding that the occupants had no right to sell or mortgage the same. For, if the claim be true then in that ease the properties would become "Khasgi" or private properties and on the death of the occupants revert to the Ruler's family. If untrue they could not devolve upon the State of Madhya Bharat. In any case the premises in question cannot become Government premises on any view of the matter. The order dated 1-4-1948 of Jhabua Ruler does not have the effect of confiscating the houses to the State of Jhabua followed by life-grants to the occupants.

Firstly assuming that all "Khasgi" property was not the private property of the Ruler and only such of it as is settled to be so is his private property still merely because of the claim under an executive order, which is not fully carried out

involving total deprivation of all rights of the predecessors of the Petitioners including even their rights of possession, the matter did not cease to be justiciable either before or after the Constitution.

Secondly assuming that there was genuine dispute as to title between the State of Madhya Bharat and consequently of Madhya Pradesh and the occupants, it is clear from the order of the Sub-Divisional Officer, Jhabua and the appellate authority that they have not tried to determine the same judicially by giving due opportunity to the Petitioners and the State to adduce evidence on the question of such disputed title. They simply proceed on the basis of the order of the Ruler dated 1-4-1948 treating it practically as law which they were not justified in doing.

It is thus clear that the tribunals namely Sub-Divisional Officer, Jhabua and the Collector had not decided the jurisdictional fact regarding the premises in question being Government premises correctly and in accordance with the principles of natural justice even assuming that the competent authority could go into the question of disputed title.

I am, therefore, of the opinion that it was incompetent for the Sub-Divisional Officer, Jhabua as the competent authority u/s 3 of the Madhya Pradesh Government Premises (Eviction) Act, 1952, to hold merely on the basis of the orders of the Ruler of Jhabua dated 30-3-1948 and 1-4-1948 that the houses in the occupation of the Petitioners in both the cases were Government premises and to require the Petitioners to vacate.

The orders passed by the competent authority i.e. Sub-Divisional Officer, Jhabua dated 28-1-1964 under the Government Premises (Eviction) Act, 1952, and those passed in appeal by the Collector, Jhabua on 7-6-1964 are hereby quashed.

The Petitioners are entitled to Rs. 250 as costs in each case.

ORDER

P.K. Tare and H.R. Krishnan, JJ.

In accordance with the opinion of the third Judge the petition is allowed with costs, which shall be borne as directed by the third Judge. Security costs deposited be returned to the Petitioner.