

(1962) 09 KL CK 0011
In the High Court Of Kerala
Case No : A.S. No. 71 of 1961

State of Kerala

APPELLANT

Vs

Ravi Varma Raja

RESPONDENT

Date of Decision : 20-09-1962

Acts Referred:

Constitution of India, 1950 — Article 295, 3, 4
States Reorganisation Act, 1956 — Section 7, 91

Citation : AIR 1964 Ker 123

Hon'ble Judges : M.S. Menon, C.J;T.K. Joseph, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; P. Govinda Menon and P.K. Krishnankutty Menon, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, C.J.—This is an appeal by the State of Kerala against the decision of Velu Pillai J., in S. A. No. 396 of 1960. The decision affirmed subject to certain modifications which are not material the decision of the Subordinate Judge at Parur in O. S. No. 11 of 1958.

2. O. S. No. 11 of 1958 was filed by the respondent before us. It sought a declaration to the effect that the liability of the State of Travancore to pay an annuity to the plaintiff's family had devolved on the State of Kerala. The Subordinate Judge decreed the suit in terms of the plaint.

3. The only contention urged before us by the Advocate General on behalf of the State is that the suit should have been dismissed on the ground that it was not maintainable. According to him formation of the United State of Travancore and Cochin later termed the State of Travancore-Cochin on 1-7-1949 and the formation of the State of Kerala by the States Reorganisation Act, 1956, on 1-11-1956 were acts of State, and no municipal forum has the right to entertain the suit and investigate the controversy.

4. There is no doubt that the formation of the United State of Travancore and Cochin was an act of State. It was the result of a covenant entered into by the Rulers of Travancore and Cochin, a covenant similar to the one which came up for discussion in *Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax*, . In that case the Supreme Court said:

"The question that arises for our decision is whether the Covenant was an act of State. On that, there can be no two opinions. It was a treaty entered into by rulers of independent States, by which they gave up their sovereignty over their respective territories, and vested it in the ruler of a new State. The expression "act of State" is, it is scarcely necessary to say, not limited to hostile action between rulers resulting in the occupation of territories. It includes all acquisitions of territory by a sovereign State for the first time, whether it be by conquest or cession. And on principle, it makes no difference as to the nature of the act, whether it is acquisition of new territory by an existing State or as in the present case, formation of a new State out of territories belonging to quondam States. In either case, there is establishment of new sovereignty over the territory in question, and that is in act of State."

5. In *Virendra Singh and Others Vs. The State of Uttar Pradesh*, the Court said:

"All authorities are agreed that it is within the competence of the new sovereign to accord recognition to existing right in the conquered or ceded territories and, by legislation or otherwise, to apply its own laws to them; and these laws can, and indeed when the occasion arises must, be examined and interpreted by the municipal courts of the absorbing State."

The contention of the respondent is that such a recognition is available in this case.

6. The contention is justified. The United State of Travancore and Cochin did not stop the payment of the annuity on the formation of the State. It is common ground that the new State continued to pay the annuity till 10-1-1955.

7. Ordinance No. 1 of 1124 promulgated by the Raj Pramukh of the United State of Travancore and Cochin is also significant. Clause 7 of that Ordinance dealt with the effect of the formation of the United State of Travancore and Cochin and specifically stated that the formation of the United State shall not

"affect any right, privilege, obligation or liability acquired, accrued or incurred prior to the appointed day."

Ordinance No. 1 of 1124 was replaced by Act No. 6 of 1125. Section 7 of that Act was also to the same effect.

8. In *Jagannath Agarwala Vs. State of Orissa*, the Supreme Court said:

"What is an act of state and when it ceases to apply between a new Sovereign and the subjects of a State conquered, acquired or ceded to the new Sovereign, has been the subject of several decisions of this Court. In *Dalmia Dadri Cement*

Co. Ltd. Vs. The Commissioner of Income Tax, and The State of Saurashtra Vs. Memon Haji Ismail Haji, it has been held that unless the new Sovereign, either expressly or impliedly, admits the claim, the municipal courts have no jurisdiction in the matter."

And in Promod Chandra Deb and Others Vs. The State of Orissa and Others, :

"The Municipal Courts recognised by the new sovereign have the power and the jurisdiction to investigate and ascertain only such rights as the new sovereign has chosen to recognise or acknowledge by legislation, agreement or otherwise. Such an agreement or recognition may be either express or may be implied from circumstances and evidence appearing from the mode of dealing with those rights by the new sovereign. Hence, the municipal courts have the jurisdiction to find out whether the new sovereign has or has not recognised or acknowledged the rights in question, either expressly or by implication, as aforesaid. In any controversy as to the existence of the right claimed against the new sovereign, the burden of proof lies on the claimant to establish that the new sovereign had recognised or acknowledged the right in question."

In the circumstances of this case we entertain no doubt that the right with which we are concerned has been recognised by the United State of Travancore and Cochin.

9. It is impossible to say that the formation of the State of Kerala was an act of State. An act of State does not ordinarily occur within the jurisdiction. The States Reorganisation Act, 1956, was only a piece of legislation in the exercise of the powers conferred on Parliament by Articles 3 and 4 of the Constitution. And as pointed out by the learned Judge in the judgment under appeal Section 91(a) of that Act is sufficient to sustain the present suit against the State of Kerala.

10. It follows that the appeal should fail and be dismissed with costs. We do so.