(1970) 09 MP CK 0019

In the Madhya Pradesh High Court

Case No : S.A. No. 719 of 1965

State of Madhya Pradesh — APPELLANT

Vs

F.R. Qureshi and another — RESPONDENT

Date of Decision : 03-09-1970

Acts Referred:

Bhopal State Land Revenue Act, 1932 — Section 182, 51

Citation : (1976) ILR (MP) 461 : (1973) JLJ 533 : (1973) 18 MPLJ 582

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : B.P. Sinha, for the Appellant; Vijay Gupta and K.L. Issrani, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.

This second appeal arises from a suit for a declaration that the plaintiffs are occupants of the lands mentioned in paragraph 1 of the plaint and for a direction that their names be entered in the revenue record. They also prayed for perpetual injunction against the defendant from interfering with the possession of the plaintiffs in respect of the suit lands.

It was alleged by the plaintiffs that they are the heirs of Abdul Shakoor Qureshi to whom a patta was granted on April 10, 1951, in consideration of his excellent services. Abdul Shakoor Qureshi was in possession of these lands. The plaintiffs, on the death of Abdul Shakoor Qureshi, applied for mutation but the Tahsildar rejected their application. The State Government resisted the suit contending that the patta relied on by the plaintiffs was not valid.

The plaintiffs amended the plaint and averred in paragraph 2 (A) as follows:

That in 1951, the above said lands were obtained by Late Col. Abdul Shakoor Qureshi on lease. But in the meantime H. H. the Nawab of Bhopal issued orders for the grant of PATTA. Late Col. Abdul Shakoor Qureshi had been in possession of the lands since 1951, first as a lessee and then as an ''occupant''...............

Then in paragraph 2 (B) it was alleged that Nawabzada Rafiqullah Khan was of unsound mind and had been an inmate of lunatic asylum but long before the handing over of the administration of the State, the Nawab of Bhopal had taken over the administration of the said Nawabzada''s Jagir. The Nawab of Bhopal in his personal capacity as uncle of the aforesaid Nawabzada had been looking after the administration of the Jagir during his own regime and even thereafter. It was thus averred in the amended plaint that the Jagirdar being a lunatic, the administration of the jagir was taken over by the ruler in two different capacities, firstly as the ruler of Bhopal, and, secondly in his personal capacity as the uncle of the Jagirdar. It was further averred that by Gazette Notification dated May 31, 1949 (correct year 1948) the Revenue Secretary of the Idgah Deori was invested with the powers of Nazim under the Bhopal State Land Revenue Act including the power to grant patta of unoccupied lands u/s 51 of the Act. It was then averred that "the patta issued to the deceased Col. A. S. Qureshi shall be deemed to be a patta issued by the Collector as the said patta bears the signatures of the Revenue Secretary of Idgah Deori."

The defendant State disputed the position taken by the plaintiffs in the amended plaint. In paragraph 18 of the written statement it was alleged that Rafiqullah Khan was of unsound mind and was an inmate of a lunatic asylum for many years before his death and consequently he was incapable in law of conferring any right or title upon any one. In paragraph 19 of the written statement it was alleged that His Highness the Nawab of Bhopal had ceased to be the legal guardian of the insane Rafiqullah Khan after the State merged in the Indian Union and the Indian laws became applicable to the State. It was further alleged that Nawab Hamidullah Khan (Nawab of Bhopal, was not the legally appointed guardian of Rafiqullah Khan and he had no authority or power to appoint any administrator of the estate of Nawabzada Rafiqullah Khan, nor could the Nawab give away or authorise giving away of the lands in dispute to Abdul Shakoor Qureshi or any one else. In paragraph 20 it was emphatically alleged that the patta whereby the lands in dispute are alleged to have been given to Abdul Shakoor Qureshi is shown to have been signed by Mr. Mohamed Ahmed Ansari as administrator of the Deori Idgah but in the first place he had absolutely no power or authority to intermeddle with the property of Rafiqullah Khan and having not been legally appointed as administrator by properly constituted authority, he could not give away lands in dispute to any one. Secondly, the power to grant land being personal of the Jagirdar, it could not be delegeted to any one so that if Mr. Ansari was ever authorised to grant land on patta, that authority was null and void.

It was stated in paragraph 2 (a) of the written statement that the plaintiffs were put to strict proof of the allegations contained in the plaint as amended.

On these pleadings the parties went to trial. The trial Court held that the patta, was granted to Abdul Shakoor on April 10, 1951 and that the patta was validly granted. In the result, decree was passed in favour of the plaintiffs. The defendant State appealed. The learned Additional District Judge said "It is an admitted fact that His Highness the Nawab of Bhopal appointed Shri M. A. Qureshi as the Administrator of the property of the Jagirdar of Idgah Deori. By a notification dated 30-5-1949 the powers of a Nazim were conferred on the Revenue Secretary and, therefore, Shri M. A. Ansari was fully empowered to grant such patta ..." These statements are not correct M. A. Qureshi full name being Abdul Shakoor Qureshi was the grantee and not the administrator. Then again Mr. M. A. Ansari was not the Revenue Secretary even according to the plaintiff The Revenue Secretary was Mr. Mazrul Hasan (P. W. 1). I would advert to his evidence later on.

The learned Additional District Judge then went on to say, "Shri Ansari also stated on oath that several other pattas which were issued under his signatures were given recognizance by the State Government. The defendant No. 1 in his written statement para. 2 has impliedly admitted that the pattas granted by the Jagirdar had been recognized." This statement is contrary to the record. In paragraph 2(a) of the written statement it was clearly stated that "it is denied that the defendant or its officers had any knowledge of the patta alleged to have been granted to the plaintiff''s predecessor on file."

The learned Additional District Judge relied on section 182 of the Bhopal State Land Revenue Act and notification dated May 30, 1949 under which His Highness the Nawab of Bhopal conferred the powers of Nazim to the Revenue Secretary. The learned Additional District Judge said "the Revenue Secretary could u/s 51 of the said Act allot unoccupied lands." In the result, the appeal was dismissed.

It is quite clear that the learned Additional District Judge did not appreciate the facts correctly and the judgment is based on misconception and mis-statement of facts. Mazrul Hasan (P. W. 1) himself stated that his powers as a Nazim had been taken away in the year 1950 and further the special powers which had been granted in respect of Idgah Deori had been withdrawn. He also stated that the patta was in fact granted under the order of His Highness, as he was told. According to his information, the verbal orders were given by the Nawab of Bhopal to Mr. M. A. Ansari who must have submitted the papers to His Highness. He admitted in cross-examination that the papers were not submitted to His Highness in his presence nor he ever saw those papers.

Before I deal with the powers of Mr. M. A. Ansari, I shall advert to the true legal position as it obtained on April 10, 1951 on which date the alleged patta was granted to Abdul Shakoor Qureshi.

Shri Sinha, learned counsel for the State appellant, relied on the Merger Agreement, The States Merger (Chief Commissioners'' Provinces) Order, 1949, The merged States (Laws) Act, 1949 and the Indian Lunacy Act, 1912 (IV of 1912). It is contended for the appellant that in respect of the estate of Rafiqullah

Khan, who was a lunatic, appropriate orders could be passed only under the Lunacy Act and that it was only the ruler appointed under that Act who could grant a lease in respect of the property of the lunatic u/s 75 of that Act. It is further urged by the learned counsel for the appellant that there is nothing on the record to show that His Highness the Nawab of Bhopal, acting in his personal capacity as uncle of Rafiqullah Khan, granted the patta or made an order to grant a patta to Abdul Shakoor Qureshi. Relying on the merger Agreement it is contended for the appellant that His Highness the Nawab of Bhopal in the capacity of the ruler of Bhopal had no powers to grant any patta on that day. It is further contended that there is nothing on the record to establish that Mr. M. A. Ansari was the administrator or Nazim. His appointment was not proved in spite of specific objection in the written statement. In my opinion, effect must be given to these contentions.

The agreement for merger was signed by the ruler of Bhopal on April 13, 1949 and the State was taken over by the Chief Commissioner on behalf of the Government of India on June 1, 1949 (vide White Paper on Indian States, page 47).

By virtue of Article I of the Bhopal Merger Agreement (Appendix XXX of the White Paper at page 226) the Nawab of Bhopal ceded to the Government of India full and exclusive authority, jurisdiction and powers for and in relation to the governance of the Bhopal State and agreed to transfer the administration of the State to that Government on the First day of June 1949. Article II preserved the personal rights, privileges, immunities and dignities enjoyed by the Nawab as the ruler of Bhopal. Article III is about privy purse of the ruler. Article IV related to original investment by Qudsia Begum. Article V preserved ownership rights of properties (as distinct from State properties) belonging to the Nawab. Article VI preserved the personal privileges, dignities and titles enjoyed by the members of the family. Article VII dealt with succession to the Throne of Bhopal State. Article VIII granted immunity to the Nawab in respect of acts done whether in his personal capacity or otherwise, in respect of anything done by or under his authority during the period of his administration of the State. Article IX was about public services. Thus it is quite clear from the Merger Agreement that in respect of the powers conferred under the laws the Nawab of Bhopal ceased to have all such authority, jurisdiction and powers with effect from the first day of June 1949.

The States Merger (Chief Commissioners Provinces) Order, 1949 came into force on August 1, 1949, by virtue of which Bhopal became a Chief Commissioner''s Province.

Then under the Merged State (Laws) Act, 1949 the Acts, Ordinances and Regulations specified in the schedule were extended to and came in force in the new province, which expression meant the Chief Commissioner''s province, constituted by the States Merger (Chief Commissioner''s Provinces) Order 1949. In the schedule is included the Lunacy Act (IV of 1912). That Act provides for the custody of the person of the lunatic and management of his estate. The Merged States (Laws) Act, 1949 came into force on January 1, 1950. The patta in the present case was allegedly granted after that date.

It is not the plaintiffs'' case that the patta was granted under the Lunacy Act which governed the estate of Rafiqullah Khan after January 1, 1950. This should be the end of the matter. However, I shall consider the other contentions of the appellant State.

The case as laid in the plaint was that it was the Revenue Secretary who granted the patta [vide para 2 (B) of the amended plaint.] Learned counsel for the respondents could not show me from the plaint that there was any averment to the effect that the patta was granted by Mr. M. A. Ansari and under what powers or authority. In fact, nowhere in the plaint is a mention of Mr. M. A. Ansari. The plaintiffs were put to proof. They had to prove either that Mr. Mazrul Hasan had the power to grant patta and in fact he granted the patta or that Mr. M. A. Ansari had power to grant the patta. I have already dealt with the statement of Mr. Mazrul Hasan. He merely acknowledges his signature on the patta but from his statement it is quite clear that he did not grant the patta at all. He says that except his signature nothing was done by him in respect of the patta. In paragraph 13 of his deposition he states that he received this patta from the Tahsil. He placed it before Mr. M. A. Ansari through a docket. Mr. Ansari on the docket giving his sanction, signed the patta. He says that he merely saw the sanction of Mr. Ansari

Mr. Mazrul Hasan was the Revenue Secretary. I have only to point out from his statement that he admitted his powers of Nazamat having been withdrawn from him in the year 1950

It is quite clear from his statement that he did not execute the patta. Execution in law is not merely signing of a document but a due execution in accordance with what the law requires for a particular document. He clearly disowns any authority to grant a patta. It cannot therefore be said that the alleged patta was granted by the Revenue Secretary.

Before adverting to the statement of Mr. M. A. Ansari, it is worthy of note that Mr. Mazrul Hasan stated that he had not seen the appointment order of Mr. Ansari who had given the order for granting the patta,

The crucial point in this case is whether Mr. M. A. Ansari had the power to grant the patta. He was examined as plaintiffs'' witness No. 2. He was the administrator. His Highness assumed, before 3 or 4 years of the integration, the administration of the person and property of Rafiqullah Khan. He states that he signed the patta in the capacity of administrator but he also states that the patta was granted under special orders of His Highness

Now, the plaintiffs had firstly to prove His Highness the Nawab''s special order for the grant of this particular patta as alleged by Mr. M. A. Ansari. No such order was produced. Mr. Ansari stated that the order of His Highness was oral. If that was so, the best evidence would have been of His Highness himself. His evidence is not on record. Shri Gupta, learned counsel for the respondents, at this stage intervened and stated that the Nawab had died on February 4, 1960. The statement of Mr. Ansari was recorded on October 10, 1960. Mr. Ansari''s statement that there was an oral order of the ruler has no corroboration. All that is to be seen is in what capacity His Highness gave that order. It could not be in the capacity of the ruler of Bhopal in view of the legal position as already stated. If it was in the capacity of natural guardian of the lunatic, it was in conflict with the provisions of the Lunacy Act. But that apart, His Highness himself did not sign the patta. Nor is there any power of attorney in the personal capacity of His Highness in the record authorising Mr. Ansari to grant a patta on his behalf. Mr. Ansari stated that the procedure for granting the patta was this. When an application was received, it was first sent to the Revenue Secretary who along with his note submitted it to Mr. Ansari. He says that he did not place Shakoor Sahib''s application before His Highness nor any note was put up by him before His Highness. He obtained oral orders from His Highness.

His statement clearly shows that he did not sign the patta in exercise of any legal authority but he signed it under verbal orders of His Highness. This being the position, which emerges from the statement of Mr. Ansari, it must be said that the argument advanced before me by the learned counsel for the respondents that the patta was granted in exercise of the powers conferred under Gazette Notification dated May 31, 1949 u/s 182 of the Bhopal State Land Revenue Act (No. IV of 1932) cannot be accepted.

The above discussion may now be summed up thus:

(1) The patta was not granted by Mr. Mazrul Hasan, the Revenue Secretary, in exercise of his powers. It is not the plaintiffs'' case that he had been granted any special power or authority by the Nawab Sahib in his personal capacity. Mr. Mazrul Hasan as P. W. 1 clearly stated that his powers of a Nazim had already been withdrawn in the year 1950 while the alleged patta is of the year 1951. In fact, Mr. Mazrul Hasan denies that he granted the patta. He stated the circumstances in which he appended his signature. He clearly stated that it was granted by Mr. Ansari.

(2) It is not known when and in exercise of which powers was Mr. Ansari appointed an administrator. No statute is relied on by Shri Gupta which provides for the appointment of an "administrator" nor is it known what Mr. Ansari''s powers were as an "administrator".

(3) It was nowhere pleaded in the plaint that Mr. Ansari granted the patta in the capacity of administrator either in exercise of his statutory powers or by virtue of any special powers conferred by the guardian of the lunatic jagirdar.

(4) Mr. Ansari''s statement is that he issued the patta under an oral order of the Nawab Sahib.

(5) His Highness the Nawab of Bhopal had already handed over the administration of the State of Bhopal to the Government of India by virtue of the Merger Agreement of 1949. Therefore his alleged oral order could not be in exercise of sovereign authority as ruler.

(6) Assuming that His Higness in his personal capacity as distinct from that of the ruler was the guardian of the lunatic jagirdar, he could act as such guardian either himself or through a duly appointed and duly authorised agent. Nawab Sahib did not himself execute the patta. It is not the plaintiffs'' case that Mr. Ansari was a duly constituted attorney of Nawab Sahib.

(7) Thus the only thing which can be said for the plaintiff is that Mr. Ansari became special attorney of the Nawab Sahib for executing the patta when the latter gave an oral order for issuing the patta but that was not the case pleaded anywhere in the plaint nor is that the finding of either of the Courts below.

(8) The alleged oral order of the Nawab Sahib was not pleaded in the plaint and altogether a new case was set up in the hearsay evidence of Mazrul Hasan (P. W. 1) and in the evidence of M. A. Ansari (P. W. 2). Mr. Mazrul Hasan was examined on October 9, 1960 and Mr. M. A. Ansari on October 10, 1960. According to the information given by Mr. Gupta, His Highness the Nawab Sahib had died on February 4, 1960. Thus the new case set up in the oral evidence of Mazrul Hasan (P. W. 1) and Mr. M. A. Ansari (P. W. 2) sprung up after the death of Nawab Sahib.

The averments in paragraph 1 and in the amended paragraph 2(A) of the plaint are remarkably vague.

Mr. Gupta strenuously relies on section 182 read with sections 181 and 51 of the Bhopal State Land Revenue Act, 1932. Section 182 reads The powers mentioned in section 181 and any other power provided for in this Act, if specifically conferred by His Highness the Ruler upon a Jagirdar or his agent, shall be exercised in accordance with the provisions of this Act.

Section 181 confers on the Jagirdar the powers of a revenue officer mentioned in section 51, among other things. That section is in these words :

In an alienated village the Jagirdar may (a) exercise the powers of a revenue officer mentioned in sections 51, 56, 59 and 62 sub-section (1), and with the sanction of the Nazim the powers of a revenue officer mentioned in sections 57 and 58, except the power to impose a penalty u/s 57 sub-section (4) and section 58 sub-section (3);

(b) himself occupy unoccupied land

Section 51 enacts as follows:

Subject to rules made under this Act, the right to occupy unoccupied land shall be disposed of by the Nazim, who may require the payment of a single premium for such right or may auction it.

It will be seen from these provisions that unoccupied land could be disposed of by the Nazim. The only notification u/s 182 relied on by Mr. Gupta is dated May 25, 1948. Those powers were conferred on the specified revenue officer, namely Revenue Secretary and Nazim, Deori Idgah. Mr. Mazrul Hasan stated that he was the Revenue Secretary from 1947 to 1955 and had also the power of a Nazim of Idgah Deori but the latter powers were withdrawn and abrogated in the year 1950. Thus the notification of May 25, 1948 does not in any way help the plaintiffs.

The plaintiffs neither pleaded nor proved that Mr. M. A. Ansari was the Nazim on the relevant date. The plaintiffs'' pleading in paragraph 2(B) of the amended plaint was that under the Gazette Notification dated May 31, 1948 the Revenue Secretary was conferred with the powers of Nazim under the Bhopal State Land Revenue Act, including the power to grant patta u/s 51 of the Bhopal Land Revenue Act, and then it was contended that the patta issued to the deceased Col. Abdul Shakoor Qureshi shall be deemed to be a patta issued by the Collector as the said patta bears the signatures of the Revenue Secretary of Idgah Deori. It was nowhere the plaintiffs'' case that the patta was granted to Col. Abdul Shakoor Qureshi by Mr. M. A. Ansari in the capacity of Revenue Secretary or Nazim, Deori Idgah. In paragraph 20 of the written statement it was contended that Mr. Mohamed Ahmed Ansari had absolutely no power or authority and had not been appointed as administrator by a properly constituted authority. Mr. Ansari''s statement is extremely vague and indefinite. He merely stated that he was administrator of Idgah Deori but he is silent as to who appointed him administrator, in exercise of what authority he was appointed and when he was appointed. He states in paragraph 10 of his deposition that his appointment was by an order in writing but that order was not produced or brought on record. If the appointment of Mr. Ansari as an administrator was made after the powers of Nazim were withdrawn from the Revenue Secretary Mr. Mazrul Hasan, that appointment of Mr. Ansari being in the year 1950 was ultra vires, even assuming that there was a statutory power to appoint an administrator and that that power was exercised by His Highness the Nawab of Bhopal.

As, in spite of defendant''s specific challenge against the validity of the patta and the authority of the persons who appended their signatures to it purporting to grant the patta, the plaintiffs did not produce any evidence to prove such authority. The suit must therefore be dismissed.

The appeal is allowed. The judgments and decrees of the Courts below are set aside. The suit is dismissed with costs throughout.

