

(1964) 08 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No's. 10, 11, 48 to 51, 70 to 72, 164 and 165 of 1962

Thakrani Gulabkunverba

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 27-08-1964

Acts Referred:

Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 — Section 11, 12, 14, 14(1), 14(2)
Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 23(1), 24
Transfer of Property Act, 1882 — Section 6

Citation : AIR 1966 Guj 1

Hon'ble Judges : J.B. Mehta, J

Bench : Single Bench

Advocate : S.N. Patel, for the Appellant; K.L. Talsania, Addl. Govt. Pleader and B.R. Sompura, Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. These eleven petitions are directed against the decision of the Gujarat Revenue Tribunal hereinafter referred to as "the Tribunal" dismissing the petitioners' appeals arising from the claims of compensation for extinguishment or modification of their rights to receive rash allowances on the abolition of the Jagirs in question on the ground that such claims have no market value and, therefore, they could not be entertained u/s 14(1) of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, Act No. XXXIX of 1954, hereinafter referred to as "the Act". The petitioners have prayed for a proper writ under Articles 220 and 227 of the Constitution, but the substantial relief is under Article 227 to quash the said decision. As all these matters involved common questions of law and were disposed of by three decisions of the Tribunal, which have proceeded on the same reasoning and as they have been jointly heard by me, I am disposing of all these petitions by this common judgment.

2. The facts which have given rise to these petitions are as under:

3. These petitions can be divided into three groups:

4. Special Civil Applications Nos. 10, 11, 40, 50 and 51 of 1962 relate to Gadboried estate and the claims are of three widows and one daughter of the predeceased Thakore and of the first wife of the present Thakore. Special Civil Application No. 48 of 1962 is in respect of Kadval estate and the claim is of the widow of the deceased Thakore. In Special Civil Applications Nos. 70 to 72 of 1962 and 164 and 165 of 1962 which relate to Sihora estate, the claims are of three widows, two brothers and a daughter of the predeceased Thakore. All these claims arise from the grant of cash allowances to the petitioners from the Jagir estate and the petitioners in each case were paid these allowances under the custom of the Jagir. After the Act came into force from 1st August 1954, the petitioners' case is that the Jagirs having been abolished, these cash allowances which were incidents of Jagirs have been either extinguished or modified and they have lost their proprietary rights to those cash allowances. The petitioners therefore being entitled to get adequate compensation u/s 14(1) of the Act applied to the authorized person u/s 14(2) of the Act who is called the Jagir Abolition Officer, Baroda. He came to a finding that the petitioners' rights which were extinguished by reason of the abolition of the Jagir in question were incidents of Jagir and were rights of property whose market value could be determined and the claims of compensation as put forth were reasonable on the evidence led but he disallowed the claims on the ground that these rights being of non-transferable character had no market value and, therefore, no compensation could be awarded for those rights u/s 14(1) of the Act. In appeals filed by the petitioners the decision of the Bombay High Court in *Madan Singh Samantsinhji v. State of Bombay* Special Civil Application No. 1546 of 1958 (Bom) was pointed out to the Tribunal which in turn had negated this contention. The Tribunal however, refused to follow that decision on the ground that the points that Section 14(1) was merely procedural and so it did not provide for payment of compensation and the aspect of the difference in language between Section 11 and Section 14(2) were not raised before the High Court. The Tribunal, therefore, in the first group of cases viz. Sp.C. A.Nos. 10, 11, 49, 50 and 51 of 1962 even while proceeding on the assumption that the cash allowances in question were a charge on the jagir property dismissed the appeals on the narrow ground that the cash allowances in question had no market value and, therefore, the claim of compensation could not be awarded u/s 14(1) of the Act. In the second group covered in the Sp. C. A. No. 48 of 1962, the earlier decision was followed and the appeal was dismissed on the same ground. In the third group viz Special Civil Applications Nos. 70 to 72, 164 and 165 of 1962 which related to Sihore estate, the Tribunal not only dismissed the appeal on the said ground but it also held that the obligation to maintain the family members or to educate them and settle them in marriages would be the personal obligation of the Thakore and would not create any incident of the Jagir and, therefore, on this additional ground also that cash allowances in question

could not be the incidents of Jagir and could not fall within the purview of Section 14, the Tribunal has dismissed the appeals in that third group of cases. Against the decision of the Tribunal, the petitioners have filed these 11 petitions.

5. The short question which Mr. Patel raised was that the Tribunal had committed a jurisdictional or other patent error of law in not following the law settled by the Division Bench of the Bombay High Court which was binding on it. The said unreported decision was delivered on 19-9-1958 by the Division Bench consisting of Chainani J. (as he then was) and Badkas J. in Special Civil Appln. No. 1546 of 1958 (Bom). The petitioner was the younger brother of the Jagirdar of Umedgad Jagir in Sabarkantha District and the petitioner's claim for compensation was based on the custom of the Jagir that the junior members of the Jagirdar's family had a right to be maintained out of the income of the estate and for which purpose a Jiwai Lekh or the maintenance deed was even executed. The right to maintenance was enjoyed by the petitioners as the incident of Jagir and that right of properly having been extinguished by Section 3 of the Act, compensation was claimed u/s 14(1) of the Act. The same contentions were urged that the right to future maintenance could not be transferred u/s 6(dd) of the Transfer of Property Act and if bad, therefore, no market value and that as the legislature having provided u/s 14(2) compensation only for properly which had the market value as per the method provided in Section 23(1) and Section 24 of the Land Acquisition Act, such a claim was not competent u/s 14 (1). Their Lordships in terms refused to accept this argument as in their opinion it was not reasonable to hold that Section 14(3) set down or limited the provisions of Section 14(1) of the Act. In such a confiscatory measure, it was held that such a liberal interpretation should be given which would give effect to the intention of the Legislature, that the payment of compensation should be made for extinguishment or modification of rights referred to in Section 14(1) and which could be only done by construing Section 14(2) to mean that compensation should be determined so far as it may be permissible in the manner provided in Section 23(1) and Section 24 of the Land Acquisition Act and if, however, it could not be determined in the manner provided in the Land Acquisition Act, it must be determined in some other manner. Their Lordships have pointed out that in view of the different modes of compensation provided in Sections 11, 12 and 14 of the Act, for extinguishment of different rights, the fact that in some cases the Jagirdar on the basis of the limit of three times the assessment might receive a smaller amount than a person enjoying only rights incidental to a Jagir would not be a sufficient ground for holding that the latter person was not entitled to any compensation.

6. After this clear decision of the High Court as to the correct interpretation of Section 14(1) and (2) of the Act, it was no business of the Tribunal to refuse to follow that decision on the ground that some aspects or arguments were not considered. As pointed out by the Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, at p. 160, in para 22, the binding effect of a decision does not depend upon whether a particular argument was considered

therein or not provided that the point with reference to which an argument was subsequently advanced was actually decided. The point, viz., whether a claim whose market value could not be determined in the manner provided in the Land Acquisition Act could be entertained u/s 14(1) and its value determined in some other manner had been in terms decided. It was a decision as to the correct interpretation of Section 14 which was binding on the Tribunal. It is needless to point out that the law declared by the High Court is binding on all the Courts and Tribunals of the State until it is reversed by the Supreme Court. It is so because of the superintendence powers under Article 227 of the Constitution reposed in the High Court, for otherwise, there would be a confusion and respect for law would suffer

7. Mr. Sompura, Asstt. Government Pleader, however, urged that the said decision of the Bombay High Court must be considered as delivered in per curiam, so far as this Court is concerned. He could not support the stand of the Tribunal that it could go behind the binding decision but he wanted me to consider afresh, as if the said decision was delivered in per curiam on the grounds (1) that the High Court had not considered that Section 14(1) was only a procedural Section and did not create a right of compensation and (2) that the explanation to Section IV which had used a totally different language was overlooked. On the principle of comity of judgments as a Single Judge, I am bound by the decision of the Division Bench, But Mr. Sompura urged this question to convince me to distinguish the decision or to make a reference to a larger Bench on the ground that the previous decision was a wrong decision which had been arrived at ignoring important statutory provisions in the Act, which were not brought to the notice of the Court and therefore the decision was something determined through want of care, through some mistake or under a misapprehension. I do not agree that in the present case the decision of the Division Bench must be treated as delivered per curiam. It is only after consideration of the scheme of compensation in Sections 11, 12 and 14 of the Act and in order to see that the intention of the Legislature in providing payment of compensation for extinction or modification of rights u/s 14(1) is not frustrated that a liberal construction is given to this confiscatory measure by interpreting Section 14(2) by implying the words "so far as may be possible" even in that section. After this settled interpretation the Tribunal was obviously not justified nor I would be justified in proceeding on an assumption that Section 14(1) was merely procedural and that it did not create the substantive right of compensation and that Section 14(2) could not be interpreted as directed by this Court. Merely because a yardstick or the measure provided by the Legislature, is inapplicable and some other measure has to be evolved to find out the fair monetary equivalent for the value of the right to be compensated, it would be absurd to hold that the right specifically provided by the Legislature for compensation in Section 14(1) itself does not exist. Even without the explanation as u/s 11, by the harmonious interpretation given by this Court to Section 14(2) the same result has been achieved. The order of the Tribunal, therefore, in all

these appeals is therefore, patently illegal and must be quashed

8. Mr. Sompura, however, raised a contention that such a cash allowance could not be an incident of Jagir and, therefore, the appeals in question ought not to be remanded to the Tribunal as they would have to be dismissed even on this narrow ground. In fact in the third group of petitions which I have already mentioned, the Tribunal had given an alternative finding that the cash allowance in question amounted only to a personal obligation and was not an incident of Jagir which could be enforced against the Jagir estate and had dismissed the appeals even on this additional ground. For this contention Mr. Sompura relied on the wording of Section 3. Section 3 enacts as under.

Notwithstanding anything contained in any usage, grant, sanad, order, agreement or any law for the time being in force on and from the appointed date.

(i) all Jagirs shall be deemed to have been abolished;

(ii) save as expressly provided by or under the provisions of this Act. the right of a Jagirdar to recover rent or assessment of land or to levy or recover any kind of tax, cess, fee, charge or any hak and the right of reversion or lapse, if any, vested in a Jagirdar, and all other rights of a Jagirdar or of any person legally subsisting on the said date, in respect of a Jagir village, as incidents of Jagir shall be deemed to have been extinguished.

The argument of Mr. Sompura was that the words "all other rights of a Jagirdar or of any person" in context of Section 3(2) must receive an ejusdem generis construction and these words must take the colour from the preceding words, viz., "the rights of a Jagirdar to recover rent or assessment of land or to levy or recover any kind of tax, cess, fee, charge or any hak and the rights of reversion or lapse." It is this genus which is common to all the species specified in the Section and the rights which are spoken of as other rights whether of a Jagirdar or of any person must be the rights of a Jagirdar delegated to somebody or not which belonged to this genus. They must be in other words the rights of a Jagirdar in respect of a Jagir village enjoyed as incidents of Jagir and the other person also should have only similar rights which the Jagirdar could enjoy as incidents of Jagir.

9. Mr. Sompura relied on a passage from Maxwell on the Interpretation of Statutes, Eleventh Edition. 1962, at page 326 that the general words which follow particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words. In other words, it is to be read as comprehending only things of the same kind as those designated by them, unless of course, there be something to show that a wider sense was intended. Therefore, as pointed out by Maxwell, the principle of ejusdem generis construction would have no application if the words of wider amplitude are deliberately used by the Legislature. The ending words in Section 3(11) viz., "all other rights of a Jagirdar or of any person" would mean all rights of any description whatsoever whether of a Jagirdar or of other person provided

they were legally subsisting on the appointed day, viz., 1st August 1954 in respect of the Jagir village as incidents of Jagir. It must be borne in mind that the maxim *ejusdem generis* is only a rule of construction and it can be applied only where the meaning of the words of wider amplitude is doubtful but where the object of the Legislature in using wider words is clear and free from ambiguity, this rule of construction cannot be resorted to. The words, "all other rights" appear to me to be so wide that it would be wrong to cut down their wide import by reason of being associated with other words on the principle that they must be read *ejusdem generis* with the previous words enumerated. If the object and scope of the statute is kept in mind, viz., to abolish the Jagir of various kinds in the merged territories and to provide for matters consequential and incidental thereto as set out in the Preamble, the abolition of Jagir would necessarily include the abolition of all incidents of Jagir as well. Therefore, there would be no difficulty in holding that the words "all other rights of a Jagirdar or of any person" which are of wider import have been deliberately used by the Legislature to cover such incidents of Jagir held by any person in respect of the Jagirs. Besides, if there was a customary right of such a cash allowance as alleged, because of the existence of the Jagir and which depends on the fact that the estate of the Thakore was a Jagir in his hands and not because of any personal obligation under any personal law independent of the existence of any Jagir, was clearly an incident of Jagir. The liability of the Thakore in respect of that incident of Jagir and the corresponding right of cash allowance of the family member subsisting as incident of Jagir would obviously cease on the abolition of the Jagir and such right in any case would be modified as thereafter the only liability of the Thakore or the Jagirdar would be only as per the personal law as a personal obligation, if any, which would exist even apart from the existence of any Jagir. Therefore, the right of the petitioners being attached to or appurtenant to the Jagir, and this being an incident of the Jagir, would either be extinguished u/s 3(2) or modified u/s 3(1) as a result of the abolition of the Jagir. In that event! Section 14(1) in terms provides that if no compensation for such abolition, extinguishment or modification is provided anywhere in the Act, there shall be a right to apply for compensation to any person other than the Jagirdar, who is so aggrieved in respect of his right to or interest in the property.

10. The Tribunal has gone to the extent of saying that a cash allowance could not be an incident of Jagir because no member of the family has a right to be maintained, educated or settled in marriage at the expense of the Jagir estate. This was clearly a misconception of the true import of the word "incident" of Jagir. It would be any right which is attached to or which is appurtenant to a Jagir and which, by custom or by grant depends on the existence of the Jagir itself and is not a mere personal obligation which would exist even apart from the fact that the estate held by the Jagirdar is a Jagir or not. The Tribunal has also relied on the fact that Section 2(1) Clause (vi) defines a (Jagir) to mean the grant by or recognition as a grant by the ruling authority for the time being before the merger of a village, a group of villages or a portion of a village, and it,

therefore, held that it was elementary that an incident of Jagir meant the incident of a grant of village, a group of villages or a portion of a village and would not include any such cash allowance. While interpreting this definition the Tribunal failed to consider the inclusive clause which extends the definition of the word "Jagir" in Clause (vi) which is relevant for our purpose, to the villages, groups or portions of villages held by a talukdar of a merged taluka or estate and recognised as of his ownership, use and enjoyment under the merger agreement. If, therefore, the talukdars of the estates in question had merged their estates and they were recognised as of their ownership, use and enjoyment under the merger agreement, the entire estate whether consisting of villages or groups or portions of villages would constitute a Jagir within the meaning of the Act. If any right was claimed by anybody whether by a Jagirdar or by any person as an incident of such Jagir, whether by way of a right of recovering assessment, levy of any taxes or legas or even by way of other rights such as cash allowances, they could all form the subject matter of an incident of Jagir for whose extinguishment or modification compensation is provided in the Act. In fact, in the aforesaid decision of the Bombay High Court, the claim was in respect of a grant of maintenance allowance. My brother Vakil J. in Special Civil Appln. No. 560 of 1961 dated 21-9 1963 (Guj.) has also set aside the decision of the Tribunal and has held that a claim in respect of a cash allowance could also be an incident of Jagir. The petitioner in that case had filed the claim of compensation on the ground that the Jagirdar then in question was liable to give them maintenance. It was a right which was attached to the Jagir in the sense that that right was to be enforced against the Jagir. Such a right of the Bhayat to be maintained by the Jagir was held to be certainly an incident of Jagir. The Tribunal was, therefore, patently wrong and it proceeded on a clear misconception of the term "incident of Jagir" in rejecting the claim of the petitioners in third group of cases also on the ground that a cash allowance could not be an incident of the Jagir without going into the evidence led by the petitioners in support of the claim that the right in question was enjoyed as an incident of Jagir.

11. Finally Mr. Sompura urged that Section 14(1) refers to a right to or interest in the property and, therefore, such a cash allowance which docs not create any interest in the property itself could not fall within the purview of Section 14(1). The aforesaid Bombay decision has in terms considered that the word "properly" in Section 14(1) is not qualified and there was no reason why it should be restricted only to the Jagir property especially as the word "property" was not prefixed by the word "the". Reading Section 14 (1) along with Section 3, it was held that both the Jagir and the incidental rights having been abolished, the compensation for loss of all these incidental rights must be deemed to have been provided in Section 14. Any properly which was enjoyed as the incident of Jagir and which right was affected by Section 3 would, therefore, be properly within the meaning of Section 14(1). There is, therefore, no substance in the contention of Mr. Sompura that a right to a cash allowance was not a right to some property though it may not be a right to some Immovable property or interest in the Jagir

properly itself.

12. One more contention was raised by Mr. Sompura by relying upon the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. Act No. XXII of 1956, which was enacted to abolish the remaining alienations of miscellaneous character prevailing in the merged territories and to provide for mailers consequential and incidental thereto. Under that Act a cash allowance under a grant by a ruler of the merged state is covered u/s 2 (1) in the definition of the word "cash allowance". Section 15(1)(iii) provides a compensation equivalent to three times the amount of the cash allowance, if the alienation was continuable for the life time of the alienee. These provisions have not been relied upon by the petitioner. The Petitioner's claim is only under the Act in question u/s 14 of the Act, Once it is decided that the estate of the Thakores in question was a Jagir such Jagir would be abolished under the first Act along with the incidents of the Jagir. Therefore, there would be no scope for resorting to the Act of 1965, which abolishes only the surviving alienations which remained unabolished by the earlier Act. The provisions of that Act could not, therefore, help the Government.

13. In the result, all these petitions must be allowed and the orders of the Tribunal are set aside and all these mailers shall go back to the Tribunal which shall dispose of the petitioners' appeals in respect of their claims of compensation u/s 14 in accordance with law in the light of my observations. As the Tribunal had dismissed the appeals only on preliminary grounds as set out above and had not determined the question whether the petitioners had proved their alleged rights as incidents of Jagir on the evidence led by them, it would be open to the State Government to raise all these contentions before the Tribunal. All the petitions are accordingly allowed and the Rule made absolute as stated above with costs in each case. The Tribunal will decide these matters as expeditiously as possible.