

(1960) 11 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Ref. No. 36 of 1960 in Civil Writ Petition No. 187 of 1956

Thakur Jai Singh

APPELLANT

Vs

Thakur Sobhag Singh and Others

RESPONDENT

Date of Decision : 08-11-1960

Acts Referred:

Constitution of India, 1950 — Article 154, 238
Jaipur Law (Validating) Act, 1952 — Section 2
Jaipur Matmi Rules, 1945 — Rule 14(1), 14(2)
Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 2

Citation : AIR 1961 Raj 146 : (1961) RLW 168

Hon'ble Judges : Sarjoo Prosad, C.J.; Jagat Narayan, J.; J.S. Ranawat, J

Bench : Full Bench

Advocate : R.K. Rastogi and D.P. Gupta, for the Appellant; For Intervener: H.P. Gupta, for Intervener and Maji Bhikawatji, V.P. Tyagi, Sagarmal Mehta for Respondent 1 and G.C. Kasliwal, General for Respondents 2-5, for the Respondent

Judgement

Jagat Narayan, J.—This writ petition has been referred for decision to a Full Bench along with D. B. Civil Writ Petition No, 4/57 as some common important questions of law arise in them. As however the facts in the two cases are different, it will be more convenient to deal with the two cases separately,

2. D. B. Civil Writ Petition No. 187/56 is directed against an order of the Board of Revenue dated 12-9-56 refusing to sanction Matmi in favour of Jai Singh petitioner and sanctioning it in favour of Sobhag Singh Respondent No. 1 in respect of the Jagir held by one Sabal Singh who died in 1948.

3. Sabal Singh was a Panchpana Sardar of Sheikbawati which formed part of the domains of the erstwhile State of Jaipur. One Nahar Singh was the common ancestor of the parties. Nahar Singh had four sons--Lachaman Singh, Pern Singh, Bhairon Singh and Bhawani Singh. Lachman Singh was the eldest out of them. On the death of Nahar Singh his estate was divided amongst these four sons. The estate of Bhairon Singh was known as Jhakora Thikana. On the death

of Bhairon Singh, his two sons Devi Singh and Moti Singh succeeded to the estate in equal shares. Devi Singh was the elder of the two. Sobhag Singh respondent No. 1 comes from Devi Singh's line.

4. Moti Singh adopted Devi Singh's son Mangal Singh. Mangal Singh had two sons --Baney Singh and Chhattar Singh. Chhattar Singh died heirless. Baney Singh died leaving a son Dungar Singh. Dungar Singh adopted Sabal Singh. This Sabal Singh came from the line of Lachhman Singh.

5. In 1930, Sabal Singh adopted Jai Singh petitioner who also came from the line of Lachhman Singh. In 1933 he applied to the Ruler of Jaipur for recognition of this adoption for purposes of succession to the Thikana. Sobhag Singh respondent, Mohan Singh, Guman Singh, Man Singh and Khet Singh belonging to line of Devi Singh filed objections against the recognition of the adoption. The Council of State which consisted of the Ruler of Jaipur and his Advisers passed the follow in resolution on 23rd May, 1936 on this subject :

"(A) Thakur Sabal Singh of Jhakora be informed with reference to his petition dated the 3rd Novem- ber, 1933, that while his wishes for recognition of the adoption of Jai Singh of Mahensar branch by him will receive due consideration, His Highness in Council see no reason at the present moment to recognise the adoption, advocated by him;

(B) The alleged adoption of Jai Singh shall in no way be deemed to be an adoption that will in any sense bind the Darbar as regards the question of succession;

(C) Thakur Sobhag Singh and other objectors be also informed of the above order and it should be made clear that the Council considers it unnecessary at present to adjudicate as regards the question of succession."

6. A review petition, filed by Sabal Singh on the subject, was rejected on 28-10-1937 on the ground that in view of the Council Resolution dated 23rd May, 1936 no further action was necessary.

7. On 16-6-1947, Sabal Singh filed an application to the Prime Minister of the former State of Jaipur for the recognition of the adoption of Jai Singh for purposes of succession at an early date as he was apprehending that he might die at any time. This application was sent to the Board of Revenue for inquiry and report under the Jaipur Matmi Rules, which were framed by the Government of Jaipur in 1945. The Board submitted a report to the effect that in view of the Council Resolution dated 23rd May, 1936 the application was not maintainable as Sabal Singh was still alive.

Before this report reached the Prime Minister, Sabal Singh died on 28-1-1948 and the Prime Minister again sent back the application for inquiry and report. The Nazimi to whom the matter was referred for inquiry refused to record evidence about the factum of adoption on the ground! that the adoption could not be recognised for purposes of succession in view of Rule 14 (2) of the Jaipur Matmi

Rules as Sabal Singh had not obtained the sanction of the Government before taking Jai Singh in adoption. Rule 14(2) runs as follows:

"No adoption shall be recognised for the purposes of succession to a State grant unless a holder has obtained the previous sanction of the Government to adopt, such sanction being given only in favour of a direct male lineal descendant of the original grantee".

8. On appeal, the Revenue Board held that in view of the wordings of the Council Resolution dated 23rd May, 1936 and the fact that the Revenue Board did not give a definite finding in 1947 the inquiry into the factum of adoption could not be shut out. The case was sent back to the Nazim for proceeding further with the inquiry. The Nazim thereafter recorded evidence of the parties and held that the factum of adoption had been established, but that in view of Rule 14 (2) the adoption could not be recognised for purposes of succession to the Jagir as previous permission to adopt had not been taken. He however held that Jai Singh had a preferential claim to succeed to the grant under Rule 14(1) over the other claimants as he belonged to a more senior line of the original grantee in comparison to them. Rule 14(1) runs as follows:

"Subject to the provisions of Rule 13, succession in the absence of a direct male lineal descendant of the last holder shall be restricted to the lineal male descendants of the original grantee, preference being given to the senior member of the senior line".

He accordingly made a recommendation that Matmi be granted in favour of Jai Singh. The Collector agreed with the finding of the Nazim on the question of the recognition of Jai Singh as a successor to the grant on the ground of his adoption. But he did not agree with him with regard to Jai Singh's preferential claim over other claimants to succeed under Rule 14(1).

The Collector was of the opinion that on the death of Nahar Singh the estate was divided between his sons and consequently Nahar Singh could not be regarded as the original grantee of the grant held by Sabal Singh. He was of the view that Bhairon Singh should be regarded as the original grantee for purposes of succession to Sabal Singh's estate. As Jai Singh did not belong to Bhairon Singh's line, he was of the opinion that Sobhag Singh was entitled to succeed to the grant, being the senior member of the senior line reckoning from Bhairon Singh.

9. On the above recommendation the Board of Revenue passed the impugned order on the following two grounds :

"(1) that Nahar Singh could not be regarded as the original grantee when the question of succession to Sabal Singh arises but that Bhairon Singh should be considered to be the original grantee;

(2) that although Jaipur State Matmi Rules, 1945 were not applicable to the case as these rules were not retrospective, even before these rules came into force a

Panchpana Sardar had to obtain the sanction of the Ruler for taking a son in adoption and Jai Singh could not be recognised as a successor to the grant of Sabal Singh on the ground of his adoption as such adoption was not recognised by the Government of Jaipur for purposes of succession".

10. The case of the petitioner is that the Board of Revenue committed errors apparent on the face of the record and their decision should be quashed by this court under Article 226 of the Constitution. All the grounds on which the judgment of the Board of Revenue was attacked before us were not taken in the petition. But new grounds were allowed to be raised by the Division Bench before which the case came up for hearing and which, made the present reference. These grounds were mentioned in the order of reference and the parties had full notice of them when the case was argued before us.

11. With regard to the first ground, the contention on behalf of the petitioner is that the Board committed an error on the face of the record in holding that Bhairon Singh should be regarded as an original grantee in relation to the question of the succession to the grant held by Sabal Singh. The respondents tried to support the finding arrived at by the Board on this point on the basis of the reasoning given by them.

12. The relevant provisions of the Jaipur Matmi Rules, 1945 in this behalf are as follows:

Rule 13. "The eldest real son of the last holder or if such son is dead, such son's eldest real son or eldest real grand-son is entitled to succeed, unless in the opinion of the Ruler he is unfitted to succeed by reason of serious mental or physical defect or disloyalty;

Provided, firstly, that in the case of the Panchpana Sardars of Sheikhwati and the Bhomias of Udaipurwati, the grant shall devolve on all the surviving real sons and the real son or grand-sons of predeceased sons of the last holder in accordance with local custom unless in any particular case His Highness the Maharaja Sahib Bahadur has recognised that the ordinary rule of succession by male lineal primogeniture shall apply;

.....

Rule 14(1) "Subject to the provisions of Rule 13, succession in the absence of a direct male lineal descendant of the last holder shall be restricted to the lineal male descendants of the original grange, preference being given to the senior member of the senior line:

.....

13. We may mention here that although the validity of the Jaipur Matmi Rules, 1945 was challenged before us it was not disputed that so far as Nahar Singh's branch of Panchpana Sardars is concerned the grant devolves in accordance with the custom and usage embodied in the above provisions.

14. The reasoning given by the Board in holding Bhairon Singh to be the original grantee is contained in paras 6 and 7 of their judgment. In para 6, they observed :

"In the genealogical table filed in this case it is shown that Nahar Singh had four sons. Lachman Singh was given Mahensar Thikana and Jhakora Thikana came to Bhairon Singh. Parasrampura and Ismailpur Kumawas went to Bhawani Singh and Pem Singh respectively. If any inference can be validly drawn on the basis of this pedigree table it would be that after the death of Nahar Singh there was a complete severance of the estate among the surviving sons evidently with the sanction of the former Government of Jaipur. As a result thereof Thikana Jhakora assumed a separate entity".

15. The judgment of the Board itself however goes to show that the Thikana did not devolve on a single person after the death of Bhairon Singh but all his male lineal descendants inherited it in equal shares. If the grant had not been split up on the death of Bhairon Singh and if Sabal Singh had inherited the whole of it, there might have been some plausible ground for contending that Bhairon Singh was the original grantee in respect of the grant held by Sabal Singh, But as it was, Sabal Singh held only a part of the grant held by Bhairon Singh. We are of the opinion that an original grantee can only mean the person on whom a fresh grant is conferred for the first time. Bhairon Singh cannot therefore be regarded as an original grantee.

16. The final reasoning of the Board is contained in the concluding part of para 7 of the judgment in these words:

"Dungar Singh had no real son of his own and he applied for permission to adopt Sabal Singh son of Chandan Singh in the line of Nahar Singh's eldest son Lachhman Singh. Objections were raised against this adoption by Hanuman Baksh Singh the father of Sobhag Singh, one of the present claimants and others. The Jaipur Ruler decided that as Dungar Singh had strained relation with Mohan Singh he could not be expected to take his son in adoption. It was also observed by him that as Hanuman Baksh Singh had only one son hence that son could not be given in adoption. The claims of Hanuman Baksh Singh and Mohan Singh to give their sons in adoption, although they were in the line of Bhairon Singh, were thus rejected by the Jaipur Ruler and Sabal Singh was allowed to be taken in adoption, This Sabal Singh got the Matmi sanctioned in his name on 5-12-28 after the death of Dungar Singh as observed earlier. This Sabal Singh took Jai Singh in adoption and applied to the Jaipur Ruler for recognition of the same. This recognition was withheld and Sabal Singh's request for reconsideration of the matter was also rejected. We have traced the history of the previous devolutions of this estate to show that for all practical purposes Bhairon Singh was treated as the original grantee and whenever any occasion arose to decide, a reference to the line of Bhairon Singh was always made in some connection or the other. Thus we are of the opinion that Nahar Singh cannot be treated as an original grantee of Thikana Jhakora".

17. The Board earlier referred to the assessment of Rs. 1546/10/6 as Mamla on Bhim Singh and Mangal Singh and Rs. 515/9/- on Mohan Singh whose relationship with Bhairon Singh was as shown below:

BHAIRON SINGH | _____ | |
Devi Singh Moti Singh | | | Mangal Singh | (Came in adoption) | 1/2 |
Rs.1031/2/- _____ | | | Mangal
singh Bhimsingh Takhatsingh (went in adoption) ? | Rs.515/9/- Mohansingh ?
Rs.515/9/-

So far as this devolution is concerned it was in accordance with the custom and usage mentioned above, namely, that upon the death of a holder his estate is divided equally amongst his male lineal descendants.

18. They also referred to the fact that on the death of Mangal Singh his estate devolved on his grandson Dungar Singh and his son Chhatar Singh. This was also in accordance with the above custom and usage.

19. Lastly, they referred to the fact that on the death of Chhatar Singh his estate devolved on Dungar Singh. No question of any reference to Bhairon Singh's line arose in any of the above devolutions.

20. The order sanctioning the adoption of Sabal Singh for purposes of succession on the application of Dungar Singh is on record. It seems to us that the Board misinterpreted this order. Sabal Singh came from the line of Nahar Singh's eldest son Lachbman Singh. The following persons filed objections: Vijai Singh belonging to Pem Singh's line, Hanuman Baksh Singh belonging to Bhairon Singh's line, Mohan Singh belonging to Bhairon Singh's line and Jodhsingh belonging to the line of Bhawani Singh. A perusal of the order shows that the case of Dungar Singh was that according to the custom and usage prevalent in Sheikhwati a male member belonging to the Tikai line had to (sic-no) preferential claim and as Nahar Singh was the original grantee, Sabal Singh, who belonged to the line of his eldest son had a preferential claim over the objectors.

The objectors based their claims on being nearer kinsmen of Dungar Singh. None of them disputed that Nahar Singh was the original grantee. In the alternative, reasons were given on behalf of Dungar Singh for not adopting the sons of Mohan Singh and Hanuman. Bux Singh who were his nearer collaterals. The arguments advanced on behalf of Dungar Singh were first summarised in the order. Then followed the findings which were in these words:

"In view of the facts referred to above we are of the opinion that Sabal Singh has a preferential claim as he belongs to the Tikai line. Dungar Singh has brought him up and has educated him and wishes to adopt him. The objectors have not produced any evidence to show that a male member of the Tikai line cannot be adopted if there are nearer collaterals living. The papers of 23 Thikanas of Sheikhwati, which have been produced, go to show that the adoption of a member of the Tikai line is not against custom and usage".

21. It will thus be seen that it was asserted on behalf of Dungar Singh that Nahar Singh was the original grantee and none of the objectors challenged this assertion and in the order this assertion was accepted and Sabal Singh's preferential claim as belonging to the line of the eldest son of the original grantee was recognised. This order can in no way be said to treat Bhairon Singh as the original grantee.

22. We accordingly hold that the finding arrived at by the Board that in considering succession to the grant held by Sabal Singh, Bhairon Singh should be treated as the original grantee and not Nahar Singh, is patently erroneous on the face of the record. We therefore set it aside.

23. On behalf of Sobhag Singh, our attention was drawn to Will's report according to which one Sardool Singh was the common ancestor of the parties. Even assuming that it was so, Jai Singh belongs to the more senior line than the other claimant Sobhag Singh who alone has come forward to contest his claim.

24. The second ground on which the Board based their judgment is further divisible into two parts (a) firstly they held that the adoption could not be recognised because prior sanction of the Ruler was not taken and (b) secondly, they held that Jai Singh's adoption could not be recognised for purposes of succession as the Ruler of Jaipur State had not granted recognition to it when an application was made to him.

25. It was conceded by the Board that the Jaipur Matmi Rules 1945 were not applicable to this adoption which had taken place in 1930. They also conceded that there was no rule in force prior to 1945 requiring the previous sanction of the Ruler before an adoption could be made by a grantee. Certain rules were drafted in 1892 for the information and guidance of the grantees. But the Council of State declined to approve them by resolution No. 5 dated 27-11-1940 which ran as follows:

"Resolved that as no difficulty in deciding cases of succession to Jagirs has been experienced in the past and practice, precedents, usage and custom already exist on the subject, the Council do not consider it necessary to lay down any set of rules".

The Board accordingly concluded that in the absence of any rules before 1945 case law alone could throw some light on the practice, usage and custom regarding succession by adoption. They purported to infer on the basis of decided cases that prior sanction of the Ruler was necessary. They however did not cite a single case in which it might have been held that previous sanction of the Ruler was necessary before a grantee could take a son in adoption.

26. They quoted in extenso from a decision of the Board in Case No. 84/ Jaipur of Section 2006 decided on 26-9-50. In that case or in the cases referred to therein there was no refusal to recognise an adoption on the ground that previous sanction of the Ruler was not taken. The Board were obviously under a

misapprehension in thinking that Sabal Singh was taken in adaption with the previous sanction of the then Ruler of the Jaipur State.

We have already referred to the order by which the adoption of Sabal Singh was recognised for purposes of succession to Dungar Singh's grant. That order itself shows that it was passed on the application of Dungar Singh which he filed after he had already adopted Sabal Singh. In the later part of the order no doubt it was written that Dungar Singh wanted to adopt Sabal Singh. This was obviously done by mistake. The earlier part of the order clearly shows that Dungar Singh had filed an application for the recognition of the adoption after he had actually adopted Sabal Singh.

27. There was thus no material before the Board on the basis of which they might have concluded that an adoption could only be recognised for the purpose of succession if it had taken place after obtaining the sanction of the Ruler.

28. We now come to the other ground that Jai Singh's adoption could not be recognised for purposes of succession as the Ruler of Jaipur State had not granted recognition to it when an application was made to him. We have already referred to the resolution of 23rd May, 1936 on the subject passed by the Council of State. Under that resolution the question of the recognition of Jai Singh's adoption for purposes of succession was left open by the Ruler with the observation that Sabal Singh's wishes in this behalf will receive due consideration when succession opens after his death. Sabal Singh made two more attempts in 1937 and 1947 respectively to have the adoption recognised during his life time. Before his second application filed in 1947 could be finally decided he died. An order was thereupon passed for the investigation of the question of the recognition of his adoption. Before a final decision could be taken in the matter the sovereignty of the Ruler of Jaipur lapsed on the formation of the State of Rajasthan.

Under Article VII(3) of the Covenant, it was laid down that unless other provision was made by an Act of the Legislature the right to resume Jagirs or to recognise succession according to law and custom to the rights and titles of the Jagirdars shall vest exclusively in the Rajpramukh. Even the Rajpramukh of Rajasthan did not pass any order in this case till the Constitution of India came into force.

29. The argument on behalf of the petitioner is that the power of the Rajpramukh to resume Jagirs or to recognise Succession came to an end as soon as the Constitution of India came into force. For with the enforcement of the Constitution the Rajpramukh had no other powers than what were conferred upon him by the Constitution. The Rajpramukh was not given power to decide the question of succession to Jagirs by any provision of the Constitution. Reliance was placed on a Full Bench decision of this Court in *Bahadur Singh v. Rajpramukh of Rajasthan*, ILR (1955) 5 Raj 693: (S) AIR 1955 Raj 135).

30. We are of the opinion that this contention of respondents must be upheld. It was held in the above case that on the coming into force of the Constitution the

power conferred on the Rajpramukh under Article VII(3) of the Covenant lapsed. This power could no longer be exercised either by the Rajpramukh or by the State of Rajasthan or by anyone else and the question of succession to Jagirs became purely a civil matter, justiciable by the ordinary courts of the land. As there was no law at that time barring the jurisdiction of the civil court in the matter it was held in that case that the civil courts had jurisdiction to decide disputes relating to succession to Jagirs.

31. Thereafter the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 came into force on 5-11-1955. u/s 3 of this Act all decisions already given in accordance with the laws in force on the date of the coming into force of the Constitution were validated. Under Sections 4 and 5 of the Act specific revenue courts were designated as forums for deciding pending and future cases of disputes relating to succession to Jagirs. The jurisdiction of the civil courts to decide such cases was thus barred. It was under this Act that the present dispute relating to the succession to the Jagir of Sabal Singh deceased came up for decision before the Board of Revenue.

The Board of Revenue were bound to decide the dispute before them as if it were an ordinary civil dispute relating to succession to the properties of Sabal Singh deceased and the question of any recognition of the adoption did not arise after the coming into force of the Constitution. The decision of the Board of Revenue is erroneous on the face of it as they were under the misapprehension that Jai Singh could not Succeed to the estate of Sabal Singh even after the coming into force of the Constitution because the Ruler of Jaipur had not recognised his adoption for purposes of succession,

32. On behalf of Sobhag Singh and the State of Rajasthan it was contended that even though the Jaipur Matmi Rules 1945 were not retrospective they were in force when succession opened in this case and thus were applicable to it. It was asserted that under these rules no adoption could be recognised for purposes of succession unless it was made with the previous sanction of the Ruler.

Further it was argued that under Rule 14 (2) of the Jaipur Matmi Rules an adopted son even though validly adopted under the personal law did not acquire any right to succeed to the estate of his adoptive father merely by such adoption and that it was only after the adoption was recognised for purposes of succession that he acquired such a right. It was contended that as the adoption of Jai Singh had not been recognised by the Ruler, the grant held by Sabal Singh did not vest in him on his death in 1948 but vested in his nearest collateral Sobhag Singh and Jai Singh could not acquire any right by the coming into force of the Constitution which he did not possess already on 26-1-1950.

33. On behalf of the petitioner it was strenuously argued that the Jaipur Matmi Rules 1945 had no statutory force but that they were merely administrative rules framed for the guidance of the officers who were entrusted with the disposal of Matmi cases relating either to small jagirs or in which there was no dispute.

34. We are of the opinion that the Jaipur Matmi Rules 1945 did not have the force of law at any time. These rules were published in the Jaipur Gazette Extraordinary dated 8th December, 1945 under Revenue Branch Notification dated 24-11-1945 No. 15941/Revenue, which ran as follows:

"The Jaipur Government are pleased to approve of The Jaipur Matmi Rules 1945 attached herewith".

Under the Government of Jaipur Act, 1944 which came into force on 5-9-45, the Council of Ministers consisting of the Prime Minister and such other Ministers as His Highness the Maharaja may determine was constituted to aid and advise His Highness in the exercise of the executive authority of the State. Under the Jaipur General Clauses Act 1944, which came into force on 14th March, 1944 "Government" was defined as follows:

" "Government" or "the Government" shall mean the Council of Ministers consisting of the Prime Minister and such other Ministers as His Highness may appoint and shall denote the Prime Minister or any other Minister authorised by an order in Council to administer executive government with such powers and under such limitation as may be specified in such order".

It is not disputed that the Government of Jaipur had no legislative power. The assertion on behalf of the respondents however is that the Jaipur Matmi Rules acquired statutory force as they received the assent of His Highness the Maharaja on 7-11-45 u/s 28 of the Government of Jaipur Act 1944. This assertion is solely based on an affidavit filed by Shri Aftab Ahmad Kherie, Officer on Special Duty for Revenue Legislation, Rajasthan, who was a member of the Board of Revenue in the erstwhile Jaipur State. He has sworn that he saw the order of approval of His Highness with his own eyes on a file in the Secretariat which is not traceable.

35. On behalf of the petitioner it is urged that if these rules had received the assent of His Highness there was no reason why this fact should not have been mentioned in the notification under which these rules were published in the Gazette. On the contrary in this notification it is expressly mentioned that the Jaipur Government were pleased to approve of the Jaipur Matmi Rules 1945.

It was argued that the wordings of this notification excluded the possibility of these rules having received the assent of His Highness the Maharaja. It is pointed out that in the notification under which the Jaipur Tenancy Act was published in the same Gazette it was expressly mentioned that it had received the assent of His Highness the Maharaja on the 4th September, 1945.

Our attention was also drawn to Section 5(1) of the Jaipur General Clauses Act and the decision of this court in Shiv Kalyan Singh and Another Vs. Bhur Singh and Another, in which it was held, relying on the wordings of the above section, that mere publication in the Gazette was not enough and that the publication had to be as an "Act". It was observed that publication as an Act means that it should

be published in the Gazette in such manner that everybody may know that the Act published is a law which has been made by or with the assent of His Highness the Maharaja. Section 5 (1) runs as follows :

"Where any Act is not expressed to come into operation on a particular day, then it shall come into operation if it is an Act of the Legislature, on the day on which the assent thereto of His Highness the Maharaja is first published in the Jaipur Gazette, and if it is any other Act, on the day on which it is first published as an Act in the Jaipur Gazette".

The attention of their Lordships was not drawn to the Jaipur Laws (Validating) Act, 1952, Section 2 of which provides:

"Notwithstanding anything contained in the Jaipur Laws Act, 1924, or the Jaipur General Clauses Act, 1944, or in any other law or in any judgment, decree or order of any court, no Jaipur law shall be deemed to be, or ever to have been, invalid by reason merely of the fact that such law was not published in the official Gazette or otherwise duly promulgated or published; and every such law shall, notwithstanding that it was not so promulgated or published, be deemed to have come into force on the date on which it was made and to have been or to be, in force until repealed by any competent legislative, authority".

36. If it had been proved that the Jaipur Matmi Rules 1945 actually received the assent of His Highness the Maharaja the defect of non-publication of these rules as an "Act", which had received the assent of His Highness the Maharaja, would be cured u/s 2 of the Jaipur Laws (Validating) Act, 1952. We are however unable to rely on the memory of Shri A. A. Kherie in view of the fact that not only was it not mentioned in the notification under which the Jaipur Matmi Rules 1945 were published that they had received the assent of His Highness but it was expressly mentioned that the rules had been approved by the Government of Jaipur which had no legislative authority.

The wordings of this notification make it highly improbable that they ever received the assent of His Highness. In the notifications under which the other Jaipur Acts were published it was invariably mentioned that they had received the assent of His Highness. We are accordingly unable to hold that the Jaipur Matmi Rules 1945 received the assent of His Highness.

37. In the alternative it was argued on behalf of the respondents that even though the Jaipur Matmi Rules had no statutory force and were merely administrative Rules they were given statutory force by the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 in Section 2(d) of which existing Jagir law was defined as any Act, Ordinance, regulation, rule, order, resolution, notification, or bye-law relating to Jagirs or Jagirdars in force in the whole or any part of the State at the commencement of this Act. We are unable to accept this contention.

38. In *Shripad Amrit Dange Vs. Sir Harsiddhbhai V. Divatia*, the definition of

"existing Indian Law" as contained in Section 311 of the Government of India Act came up for interpretation. "Existing Indian Law" was defined as any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of Part III of that Act by any Legislature, authority or person in any territories for the time being comprised in British India, being a legislature, authority or person having power to make such a law ordinance, order, bye-law, rule or regulation. It was held:

"It is not possible to read the Order as a mere executive order divorced from the context "Law, ordinance, order, bye-law, rule or regulation" are of the nature of legislative provisions, which are described in those various terms, the difference in terminology being the result of the difference between the authorities promulgating the same".

We are of the opinion that no regulation, rule, order, resolution, or notification would come under the definition "existing Jagir law" unless it was in force as law. The Jaipur Matmi Rules which were not in force as statutory rules cannot be treated as "existing Jagir-law" under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1953, Under the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, "law" includes "existing Jagir law" as defined in the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. The Jaipur Matmi Rules cannot be treated as law under the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955.

39. Even assuming that the Jaipur Matmi Rules, 1945 have statutory force, Rule 14(2) cannot be applied to adoptions which took place before the coming into force of these rules, even in cases where succession opens after the coming into force of these rules. For there is nothing in these rules to indicate an intention to apply them retrospectively even to adoptions which took place before these rules came into force.

It is no doubt open to the Legislature to deprive an adopted son of his right to succeed to his adoptive father's property by appropriate legislation. But such an intention has to be unequivocally expressed. There is nothing in the Jaipur Matmi Rules, 1945 to show that it was intended to deprive persons who had been adopted before the coming into force of the rules without obtaining the previous sanction of the Ruler of their right of succeeding to the grant held by their adoptive fathers.

40. The Ruler of Jaipur had unlimited sovereign power. He could deprive even a real son of his right to succeed to the grant held by his father. Even in the case of a real son Matmi had to be sanctioned by the Ruler or by some subordinate authority to whom this power was delegated by him before he could succeed to the grant. The recognition of an adoption for purposes of succession was a sovereign act of a similar nature.

41. It can no longer be disputed that the grant held by a Jagirdar is his property of which he cannot be deprived arbitrarily after the coming into force of the

Constitution. On the death of the Jagirdar the grant does not remain in suspension till Matmi is effected in the name of a successor. It vests in the successor as soon as the holder dies. We are unable to accept the argument advanced On behalf of the respondents that on the death of a Jagirdar the Jagir does not vest in his validly adopted son but vests in his nearest Kinsman.

We have pointed out above that so long as the Ruler exercised unlimited sovereignty it was open to him to resume the Jagir on the death of a holder. He could refuse to confer it on the nearest heir and could confer it on someone else. It was in the exercise of this power that ha sanctioned Matmi in favour of the heirs and recognised adoptions for purposes of succession to the Jagir. As was held by this court in ILR (1955) Raj 693: ((S) AIR 1955 Raj 135) (FB) this power disappeared on the coming into force of the Constitution find the questions of succession to Jagir are to be decided in accordance with the personal law applicable to the last holder.

We may mention here that this personal law includes custom or usage relating to such Jagirs. It was not disputed before us that the custom or usage applicable to this Jagir was that the adoptee should be a direct male lineal descendant of the original grantee. We are of the opinion that on the death of the holder of a Jagir without leaving any issue the grant would vest in his adopted son provided that the adoption has been made in accordance with the personal law of the adopter Jagirdar.

42. Even if the Jaipur Matmi Rules, 1945 had the force of law the provision contained in Rule 14(2) regarding recognition of an adoption for purposes of succession by the Ruler before the adopted son could succeed to the grant became void on the coming into force of the Constitution.

43. In Purshotam Singh v. Narain Singh, ILR (1955) Raj 995: ((S) AIR 1955 Raj 203), the following observations were made;

"Therefore, when Section 3 validates the decisions of the Rajpramukh given under the provisions of the now abrogated Article VII(3), it is doing indirectly the same thing which is inconsistent with the Constitution, namely validating executive decisions of the Rajpramukh which he could not arrive at under his executive functions as contained in Article 154 of the Constitution. There would be force in this argument, if these decisions of the Rajpramukh can still be called executive decisions after their validation u/s 3 of the Ordinance".

It was sought to be argued on the basis of the above observation before the Division Bench that the power of recognising adoptions and successions though originally of an executive nature was converted into a quasi-judicial power and revived as such by the Rajasthan Jagir Decisions and Proceedings (Validation) Ordinance No. 6 of 1955 and the similarly worded Act which replaced it.

The Full Bench in Bahadur Singh's Case ILR (1955) Raj 693 : ((S) AIR 1955 Raj 135) clearly held that after the coming into force of the Constitution there was no

question of recognising succession to a Jagir and that succession to Jagirs was purely a civil matter after the commencement of the Constitution. u/s 3 of the said Ordinance and Act decisions of the Rajpramukh had been validated. It was held in Purshotam Singh's Case ILR (1955) 5 Raj 995: ((S) AIR 1955 Raj 203) that only such decisions were validated which were validly given, namely, after hearing the parties.

There was no question of reviving the power of the Rajpramukh which had lapsed on the coming into force of the Constitution. In Bahadur Singh's Case ILR (1955) Raj 693: ((S) AIR 1955 Raj 135) (FB) it was held that the forum for decision of disputes relating to succession to Jagirs was the civil court. What the Rajasthan Jagir Decisions and Proceedings (Validation) Ordinance and Act did was to provide a different forum retrospectively for judicial decisions of such disputes which had become disputes of a purely civil nature. In Purshotam Singh's Case ILR (1955) Raj 995: ((S) AIR 1955 Raj 203), this court held that u/s 3 of the Ordinance only the judicial decisions of the Rajpramukh were validated, and not his executive decisions. The reason is that succession to Jagirs after the commencement of the Constitution has become purely a civil matter to be decided in accordance with law like succession to any other property.

Although in Section 3 of the above Ordinance and the Act the words used are "in cases or proceedings arising out of, or under, the laws of the covenanting States providing for the resumption of Jagirs in those States and the recognition of succession to the rights and titles of Jagirdars therein", after the commencement of the Constitution there is no question of any resumption of any Jagir or of recognition of succession to the rights and titles of Jagirdars.

The Jagir vests in the successor in accordance with law. The Ordinance and the Act which replaced it only provide a forum for settlement of civil disputes relating to succession to the rights and titles of Jagirdars. The above words therefore only mean "in cases or proceedings relating to succession to the rights and titles of Jagirdars".

We hold that in so far as the Ordinance and the Act purport to confer despotic power on the newly created forum of resuming Jagirs or recognising succession to the rights and titles of Jagirdars similar to that enjoyed by the erstwhile Rulers they are void in view of the provisions of the Constitution. But in so far as they empower the authorities concerned to decide civil disputes relating to succession to the rights and titles of Jagirdars judicially they are perfectly valid.

44. On behalf of the petitioner it was also argued that since the present Jagir was resumed on 29-10-1954, the Board of Revenue had no jurisdiction to decide the present dispute. In this connection our attention was drawn to Section 37 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 which runs as follows:

Section 37(1). "If in the course of a proceeding under this Act any question relating to title, right or interest in any Jagir land, other than a question as to

any khudkasht land or the correctness or otherwise of any entry relating thereto in settlement records or as to any boundary, map, field-book, record of rights or annual register or as to any Wajib-ul-arz of Dasturganwai or any other settlement paper lawfully prepared or as to the correctness or otherwise of any entry made therein or a question referred to in Section 3 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, arises and the question so arising has not already been determined by a competent authority, the Jagir Commissioner shall proceed to make an inquiry into the merits of the question so arising and pass such orders, thereon as he deems fit.

(2) Every question referred to in Section 3 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 shall be inquired into and decided by a revenue officer or court declared by the provisions of the said Act competent to do so.

(3) Every other question excluded by Subsection (1) from the jurisdiction of the Jagir Commissioner shall be inquired into and decided by a revenue officer or court competent to do so under the provisions of the Rajasthan Land Revenue Act, 1955 or the Rules made thereunder.

(4) If any such question as is referred to in Sub-sections (2) and (3) arises in the course of a proceeding under this Act, the Jagir Commissioner shall refer it for inquiry and decision of the court competent to do so and shall be bound by, and act according to such decision."

The first clause of Section 37 says:

"If in the course of a proceeding under this Act any question relating to title, right or interest in any Jagir land, other than..... a question referred to in Section 3 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 arises and the question so arising has not already been determined by a competent authority, the Jagir Commissioner shall proceed to make an inquiry into the merits of the question so arising and pass such orders thereon as he deems fit".

That means that a question relating to succession to the title, right or interest in any Jagir land shall not be decided by the Jagir Commissioner even if it arises in proceedings under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. Subsections (2) and (4) further clarify this position by saying that every question referred to in Section 3 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 shall be enquired into and decided by a revenue officer or court declared by the provisions of the said Act Competent to do so and that if any such question arises in the course of a proceeding under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 the Jagir Commissioner shall refer it for inquiry and decision of the court competent to do so. We therefore hold that the forum provided under the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 has exclusive jurisdiction to decide questions relating to succession to the rights and titles of Jagirdars.

45. An application was filed by the widow of Sabal Singh claiming to be his rightful heir. In case the adoption of Jai Singh is held to be invalid, Sabal Singh died in 1948 and on his death if the adoption of Jai Singh is held to be invalid, then Sobhag Singh would succeed to the Jagir. He would be the Jagirdar of the Thikana at the time of its resumption in 1954. He alone would be entitled to compensation under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. Sabal Singh's widow may be entitled to maintenance for which she should file her claim before the Jagir Commissioner.

46. For reasons given above, we quash the decision of the Board of Revenue dated 12-9-1956 passed in this case and direct them to decide the case in accordance with law in the light of observations made by us in this judgment.