
(1970) 03 SC CK 0073

In the Supreme Court Of India

Case No : Civil Appeal No. 232 of 1967

The State of Madhya Pradesh

APPELLANT

Vs

Dadu Jagdish Prasad

RESPONDENT

Date of Decision : 16-03-1970

Acts Referred:

Rewa State Land Revenue and Tenancy Code, 1935 — Section 2
Rewa State Pawai Rules, 1934, — Rule 3

Citation : (1971) 3 SCC 804

Hon'ble Judges : K. S. Hegde, J; J. C. Shah, J; A. N. Grover, J

Bench : Full Bench

Final Decision : Allowed

Judgement

A.N. GROVER, J.-This is an appeal by certificate from a judgment and decree of the Madhya Pradesh High court. In 1927 the Maharaja of the erstwhile Rewa State granted to the respondent a revenue-free grant of the Anandgarh Estate as a "Vritta Pawai" and in 1928 three more villages were granted to him on the same terms. It appears that the original Pawais were granted in lieu of military services. After the coming into force of the Pawai Rules, 1934 in the State as also the Rewa State Land Revenue and Tenancy Code, 1935, revenue was to be imposed on all the Pawais including the earlier grants although it was provided in the Rules that individual exceptions could be made by the durbar. On 18/03/1948, the Maharaja made an order disagreeing with the note of the council that Anandgarh Estate (which had been exempted from payment of revenue for two generations by the original grant) should be permanently and entirely exempted from "Den" "(land revenue)". After the merger of the States the Vindhya Pradesh Abolition of Jagir and Land Revenue Act, 1952 was enacted in the erstwhile State of Vindhya Pradesh by virtue of which all estates vested in the State. Prior to the year 1956 a sum of Rs. 91,000.00 was sought to be deducted as arrears of land revenue from 1953-54 being the amount alleged to be due from the respondent on account of his aforesaid holding from the interim compensation payable to him.

2. In October, 1956 the respondent instituted a suit for a declaration that the Anandgarh Estate was a revenue-free grant and that the State had no right to realize the aforesaid amount as arrears of land revenue or to deduct that amount from the compensation payable to him. He claimed refund of that amount which had been in fact deducted. The defence of the State was that land revenue was payable and that the Maharaja had never passed any order by virtue of which Anandgarh Estate was to remain a revenue-free estate. The Trial court decreed the suit holding that the Anandgarh Estate had remained a revenue-free estate till 30/06/1953, which was the date on which all the jagirs and estates vested under the Vindhya Pradesh Abolition of Jagir and Land Revenue Act, 1952. The Trial court relied on Ext. P. 22, dated 18/03/1948, which was the order of the Maharaja declaring that the Anandgarh Estate was not liable to pay land revenue. The State appealed to the High court. The appeal was heard in the first instance by a division bench consisting of Naik and Shiv Dayal, JJ. The learned judges differed in their judgments. According to Naik, J. the Trial court had rightly decreed the suit. He had no hesitation in holding that Ext. P. 22 was the order passed "by the then ruler whereby he had expressed a firm desire contrary to the recommendation of the State council that the estate of the plaintiff for all times be free from liability to pay land revenue. He accepted the evidence produced relating to Ext. P. 22 and held that the Trial court had rightly relied on that evidence to come to the conclusion that an order had in fact been made by the Maharaja as embodied in Ext. P. 22, Shiv Dayal, J. was of the opinion that there was no legislative element in the provision of the grant and it did not contain any command which had to be obeyed by the citizens. It was a gift pure and simple, made by the ruler. According to him Ext. P. 22 did not contain any order and at the most it was an expression of the opinion or desire which fell short of an order. The successor State was not bound to recognise any exemption or concession contained in any order or in a grant of the predecessor State. The appeal was referred to a third judge. Niwaskar, J., who heard it agreed with Naik, J. He carefully considered the evidence relating to the genuineness and authenticity of the order made by the Maharaja on 18/03/1948, and held that Ext. P. 22 embodied his order and that it had been established that by that document the Maharaja had given a decision of the durbar freeing the estate for a limited period of two generation from liability to "Deb" (land revenue).

3. Rule 3 of the Rewa State Pawai Rules, 1934 was in these terms:

"The annual revenue payable to the "Durbar" by each tenure is as follows, subject to the provisions of Rule 8 regarding transfer and to any individual exception sanctioned by the Durbar....."

S. 20 of the Rewa State Land Revenue and Tenancy Code, 1935 provided:

"The annual revenue payable to the "Durbar" by each "Pawai" tenure is as follows, subject to the provisions of S. 24 regarding transfer and to any individual exception sanctioned by the "Durbar"..."

4. It is thus clear that the law in force at the material time contained specific provisions that the Durbar could exempt any estate from payment of land revenue. The Trial court and the two learned Judges of the High court namely, Naik and Newaskar, JJ., held that the Maharaja, by means of an order, evidenced by Ext. P. 22, had made such an exemption in the case of Anandgarh Estate. Mr. Shroff counsel for the appellant made an attempt to assail the correctness of the finding on this point but we are satisfied, after an examination of the various facts and circumstances including the evidence, that the conclusion of the Trial court and the two learned Judges of the High court was unexceptionable with regard to the making of an order by the ruler who constituted the Durbar in terms of the aforesaid provision of the Rules and the Code exempting the Anandgarh Estate from payment of land revenue for two generation. Once this conclusion is reached no other point survives although Mr. Shroff made a faint attempt, to suggest that the exemption granted in respect of Anandgarh Estate from payment of land revenue by an order of the Durbar under the Rules was merely an executive act which could not be binding on the successor State. It is true that there is a well recognised distinction between the legislative and executive acts in regard to the orders issued by absolute rulers and that whenever a dispute arose as to whether an order passed by an absolute ruler of an Indian State represented a legislative act all relevant factors were considered before the question was answered. These relevant factors were the nature of the order, the scope and effect of its provisions, its general setting and context, etc. Vide *Union of India and Others v. Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd. and Another*.

5. In the present case the order made by the Durbar was under legislative sanction inasmuch as it was made in terms of the provisions of statutory rules and the Rewa Land Revenue and Tenancy Code. The decision of this court which is apposite here is the one rendered in *Promod Chandra Deb and Others v. The State of orissa and Others..* This court held, while disposing of Writ Petition No. 75 of 1957 along with other Writ Petition which had been filed challenging the orders annulling various grants that the grant by the Ruler of Talcher had been made subject to the terms and conditions laid down under Order 31 of the Rules and Regulations of the State of Talcher of 1937. These Rules and Regulations were regarded as the law of the State and it was in accordance therewith that the Khorposh grant was made by the Rider and therefore it could not be annulled by an executive action by a successor State.

6. The appeal fails and it is dismissed with costs.