

(1978) 08 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 41 of 1973

Vasantrao Baba Saheb Ingle

APPELLANT

Vs

State of M.P., and others

RESPONDENT

Date of Decision : 02-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Bharat Abolition of Jagirs Act, 2008 — Section 11, 8

Citation : (1979) JLI 510

Hon'ble Judges : K.K. Dube, J;A.R. Naokar, J

Bench : Division Bench

Advocate : Y.I. Mehta, for the Appellant; S.N. Tandon, Dy. Govt. Advocate for State and R.B. Sharma for Legal Representatives of deceased Opposite Party No. 4, for the Respondent

Final Decision : Allowed

Judgement

K.K. Dube, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks a direction that the State Government be asked to recover 1/3rd share in Jagir villages Ladkaran and Rijhari from respondents 3 and 4 and also claims that 1/3rd share of compensation on resumption of Jagirs in the said two villages be paid to him.

2. For appreciating the controversy, a little of the ancient history of the Jagir would have to be given. Shri Narayanrao Ingle who is claimed to be the common ancestor of the petitioner and the respondents 3 and 4 was originally granted a Jagir of Rai Mahal consisting" of 50 villages by the erstwhile ruler of Gwalior State in about the year 1819 A. D. This grant is shown at page 295 of Gwalior State Tarikh Jagirdaran with Kawayad Part I. Narayanrao had a brother Laxmanrao and three sons: Chimanajirao, Abasaheb and Subhedar Saheb. On the death of Narayanrao Ingle in about the year 1865, there was a partition of the Jagir property and 14 villages were given to Laxmanrao. This came to be known as Jagir Sarajapur. The remaining villages of Jagir Rai continued to be the

Jagir of sons of Narayanrao. Chimanajirao died leaving behind a son Balarao. Abasaheb died leaving behind a son Babasaheb while Subhedar Saheb died without any issue. Babasaheb also died issueless leaving behind his widow Vithabai Sahiba. The petitioner was adopted by Vithabai in about the year 1925. The validity of this adoption is disputed by the respondents though the petitioner claims that the adoption had been with the consent of Darbar (Annexure B of the petition).

3. It is then averred by the petitioner that in about the year 1885, Vithabai Sahiba was granted equal share in Jagir along with Balarao s/o Chimanaji as per order dated 31-7-1885 (Darbar order being Annexure C of of the petition). In 1885, the Jagir was divided into three Jagirs, namely, Jagir Sarajpur, Jagir Mitoji Khurd of Vithabai Sahiba (now represented by the petitioner) and Jagir Rai of Balaraoji (now represented by respondent No. 3. The petitioner then avers that his mother, Vithabai Sahiba became a Jagirdar entitled to 6 villages and 1/3rd share in village Ladkaran and Rijhari. In this petition, we are concerned with the 1/3rd share of the two villages Ladkaran and Rijhari. The above history has only been pointed out for the purposes of understanding the claim of the petitioner as the petitioner wants a direction of this Court that the State Government should execute his claim for recovery of share to which he was entitled before the date of abolition of Jagirs from the co jagirdars, respondents 3 and 4.

4. It is not necessary to show how Vithabai Sahiba became entitled to 1/3rd share in the two Jagir villages as the entitlement of Vithabai Sahiba does not appear to be disputed. The real trouble had been that she had never been paid even a single pie as her share of income from either village Ladkaran or Rijhari. By about the year 1925 when Vithabai Sahiba was not distributed any income from Ladkaran and Rijhari she made an application to the Government claiming her share from the co-jagirdars. The Government of erstwhile princely State of Gwalior, by an order dated 14-8-1929 reiterated the right of Vithabai Sahiba to receive 1/3rd share of the income in the two Jagir villages. It was, however, directed that Muntazim Jagirdar should comply and clear off the payment to which the co-sharers were entitled. The petitioner contends that the order dated 14-8-1929 has never been challenged by any of the co-sharers till the cessation of Gwalior State in the State of Madhya Bharat. The order not having been complied with during the regime of the princely State, it is contended remained an obligation of the new Government. In about the year 1937, the village Rijhari was handed over to Jagir Rai. The petitioner, therefore, claims 1/3rd share of the income from the village Rijhari since the year 1937. The petitioner relies on an order of Gwalior Darbar dated 6-5-1940, a certified copy of which has been filed as Annexure E of the petition by which the Gwalior Darbar had ordered equal distribution between the three Jagirdars of the income of the two villages and also contains a direction to the Muntazim Jagirdaran to distribute the income from the date of the order.

5. It appears that the order had been precipitated as a result of a dispute

between the three Jagirdars in respect of entitlement to share in the two Jagir villages, Ladkaran and Rijhari. By an order dated 6-5-1940, the Muntazim Jagirdaran decided to distribute the amount but before he could do so, the princely State of Gwalior merged in the new State of Madhya Bharat. The order of Muntazim Jagirdaran remained unexecuted. In about the year 1951, the respondent No. 4 filed an appeal to the State Government of Madhya Bharat with a request that the income of Ladkaran and Rijhari should be distributed from the date of order, Annexure E, that is, in the year 1940. This was rejected by the Raj Pramukh. A review of the order was also rejected. Thereafter, the petitioner states that he approached the Government of Madhya Bharat to execute the earlier order of the Gwalior State. This letter in the nature of a reminder was written on 23-12-1955. On 1-11-1950, the State of Madhya Bharat merged into the new State of Madhya Pradesh. The petitioner, therefore, claims that the earlier obligations which the State had taken upon itself must be discharged by the new State of Madhya Pradesh. The petitioner then sent several letters to the Government reminding them to recover his share of amount from the two villages. The Commissioner, Gwalior Division, by a communication dated 29-4-1960 informed the petitioner that the question of distribution of the income from villages Ladkaran and Rijhari was under consideration of the Government and the decision would be communicated to him. No communication, however, was made to him and finally, the Government by a letter dated 7-12-1972 informed him that his request has been rejected by the State Government. This letter is Annexure R of the petition. The petitioner has, therefore, come before this Court against this order.

6. Before we deal the tenability of the contentions, it would be proper if we indicate the quantum of the claim made. The petitioner claims that he is entitled under two heads:

(1) 1/3rd share of income of villages Ladkaran and Rijhari as under:

Ladkaran

1923 to 1945

...

Rs. 9,456

1945 to 3-12-1952

...

Rs. 5,694

Rijhari

1937 to 1945

...

Rs. 1,186.10.8

1945 to 3-12-1952

...

Rs. 2,241.00

(2) Secondly, he claims compensation to the extent of Rs. 2,807 in respect of the Jagir villages on the abolition of the Jagir rights. He has also claimed interest on the above amount.

7. With respect to the first part of the relief, namely, a direction to the Government to recover 1/3rd share of the post income, we do not think that the State could be asked to discharge the obligation of an executing Court. It is true that in the erstwhile princely State, the Muntazim Jagirdaran was directed to recover the amount and settle it between the co-sharer. But that obligation cannot be said to devolve on the present Government. When the princely States had ceded, there was an Act of the State and the private rights which the then Government had taken upon itself could not be enforced by the Municipal Courts. It is settled law that the new State could ignore and refuse to recognise the old stipulations and the pre-cession rights of inhabitants and they could not be enforced by an individual citizen. The Courts could only investigate and ascertain such rights which the new sovereign chose to recognise by legislation, agreement or otherwise. No legislation have been pointed out by which an obligation was cast on the State Government to realise the ancient dues of a co-Jagirdar or a co-sharer in the Jagir. It appears to be merely a matter between the co-Jagirdars and the petitioner can only take recourse to the civil Courts for enforcing the rights or obligations between the co-sharers. If the petitioner felt that the old Government had recognised his rights, he was free to enforce them against such persons through the medium of civil Court but we do not think that under the present law this can be done by means of an executive action. We have perused the Kawayad Jagirdaran. From the above enactment prevalent during the regime of the princely State, it is clear that the State took upon itself the duty of settling the dispute between the co-Jagirdars as a concession. From section 103 (5) of the Kawayad and the note under it, it is clear that Muntazim Jagirdaran was not vested with the powers of a civil Court in the matter of settlement of debts. It was simply a private interference allowed by the Darbar to the Muntazim Jagirdaran to amicably settle the accounts of Jagirdars' debt in a way that the parties may be satisfied and that they may not have recourse to the Court of law. Similarly, u/s 109 (b) in the event of any misunderstanding arising among the relations or co-sharers of a holder, the Muntazim was empowered to interfere and to amicably satisfy the parties. If he failed, he submitted the case to Darbar. The duty was thus gratuitous and could not be said to be such which the State was obliged to undertake. Such an application could not be enforced on the State after the cessation of the old regime. We, therefore, see no substance in this part of the claim.

8. Coming to the question of share in the compensation, Chapter III of Madhya Bharat Abolition of Jagirs Act, Samvat 2008 (Act 28 of 1951) provides a complete machinery as to how the compensation would be paid. Section 8 of M. B. Abolition of Jagirs Act casts a duty on the Government to pay compensation to the Jagirdar in accordance with the principles laid down in Schedule I, Section 11 deals with the amount payable to a co-sharer. The Act clearly provides that the amount payable to a co-sharer will be deducted from the amount determined as compensation payable to the Jagirdar. Since no amount is to be paid to the co-sharer, that liability still subsists and the Government is bound to pay the amount to the petitioner.

9. We, therefore, direct that the respondents 2 and 3 or such other officer or functionary as may be nominated by them determine the amount of compensation payable to the petitioner in respect of the resumption of the villages, Ladkaran and Rijhari, after giving the petitioner a reasonable opportunity of being heard in the matter and pay him the said compensation in accordance with the scheme of Madhya Bharat Abolition of Jagirs Act. The petition is partly allowed. There shall be no order as to costs. The outstanding amount of security shall be refunded to the petitioner.