

Darbar Shri Vira Vala Surag Vala, Vadia

Vs

The State of Saurashtra (Now Bombay)

Petition No. 62 of 1956

(Syed Jafar Imam, A. K. Sarkar, S. K. Das, J. L. Kapur, M. Hidayatullah, JJ)

14.04.1960

JUDGMENT

KAPUR, J. -

Prior to the integration of the Indian States with the Union of India on the promulgation of the Constitution of India there was in Kathiawad a State of the name of Vadia, succession to the Rulership of which was by primogeniture. Its Ruler then was Darbar Saheb Shri Surag Vala Bavavala. He had two sons Kumar Shri Krishan Kumar and the petitioner Kumar Shri Vira Vala Surag Vala. Kumar Shri Krishan Kumar being the elder son was the heir-apparent. On July 5, 1943, the Ruler Darbar Saheb Shri Surag Vala executed two documents in favour of the petitioner granting him in perpetuity and in heredity a village called 'Mota Pithadia' in the State for enjoyment as 'Kapal-Giras' as 'Bhayat'. The word 'Bhayat' means a cadet or the descendant of a younger branch of a Talukdar's family where the State follows the rule of primogeniture. 'Kapal-Giras' means a grant in appanage as a birthright to a share in the patrimony.

Sometime in or about August, 1947, the State of Vadia acceded to the Dominion of India on the terms contained in an instrument of accession then executed. Thereafter, on January 23, 1948, various States in the Kathiawad area entered into a covenant forming the United State of Kathiawad, also called the United State of Saurashtra. In terms of this covenant the assets of each State excepting the private properties of the Ruler, became the assets of the United State. The covenant also provided that the Ruler of each State shall be entitled to receive a certain sum as his privy purse from the revenues of the United State, to retain ownership of all private properties to be determined in the manner provided and to all personal privileges, dignities and titles. The Government of India concurred in the covenant and guaranteed all its provisions. The State of Vadia was a party to this covenant and its assets therefore became vested in the United State. On September 13, 1948, the United State of Kathiawad executed a fresh instrument of accession to the Dominion of India cancelling the instrument of accession executed by the covenanting States in or about August, 1947. On November 13, 1949, the United State of Kathiawad agreed to adopt the Constitution to be framed by the Constituent Assembly of India and further that the Constitution of India as from the date of its commencement would supersede and abrogate all other constitutional provisions inconsistent therewith in force in the United State. On the promulgation of the Constitution of India on January 26, 1950, the United State merged in the Union of India and became Saurashtra, a Part B State mentioned in the Constitution. The United State and therefore its component States since then lost all separate existence. It is not in dispute that upon such merger all the assets of the United State became vested in the Union of India.

On January 27, 1950, Kumar Shri Krishan Kumar, the elder son of the Ruler Darbar Saheb Shri

Surag Vala died and thereafter on May 16, 1950, the Ruler himself died. On February 12, 1951, the President of India issued a notification recognising the petitioner as the Ruler of Vadia with effect from May 16, 1950, and he became entitled to the rights of the Ruler which the Government of India had agreed to recognise. These were the rights reserved to the Ruler under the covenant constituting the United State of Kathiawad, namely, the right to a privy purse, to the private properties and to the personal privileges, dignities and titles.

On July 2, 1951, the Government of the State of Saurashtra issued a notification declaring that as the petitioner had succeeded his father as Ruler, the village Pithadia should, pending final orders be treated as Khalsa or Khas village of the State of Saurashtra. The petitioner was then a minor and his mother submitted a representation to the Government protesting against the notification. No reply was received to this protest. On May 23, 1952, the Government of Saurashtra issued a further notification which stated :

"Whereas the village Pithadia in Vadia Taluka of the Madhya Saurashtra District was granted, by Lekh No. 194 dated 5th July, 1943, as Kapal Giras by the late Ruler Darbar Saheb Suragwala of the former Vadia State to his second son Shri K. S. Viravala in the latter's capacity as a cadet, in appanage grant; and Whereas, the late Ruler and his eldest son Shri K. S. Krishna Kumarsinghji predeceased this second son Shri K. S. Viravala, the latter has been recognised as the Ruler of the former State of Vadia with effect from 16th May, 1950, by the Government of Saurashtra and the President of India as per Notification No. PD/MS/20 dated 12th February, 1951, of the Government of Saurashtra Revenue Department (Political) published in the Gazette of Saurashtra and Whereas, pending the recognition the Government of Saurashtra had ordered, by Notification No. PD/148/20, dated 2nd July, 1951, of the Revenue Department (Political) that village should be treated as Khalsa village of the State of Saurashtra and whereas Shri K. S. Viravala's status as a Cadet has ceased and the object of the grant in appanage has terminated in consequence of his being recognised as the Ruler.

Now, therefore, the grant is deemed to have lapsed and reverted to the former Vadia State now integrated with the State of Saurashtra at present known as the State of Saurashtra with effect from the date of Shri K. S. Viravala having been recognised as the Ruler of the former Vadia State in succession to the late Ruler Darbar Shri Suragwala of Vadia State, viz., 16th of May, 1950".

The petitioner again lodged a protest against this latter notification but this time also received no reply. On March 9, 1956, he filed the present petition under Art. 32 of the Constitution asking for the issue of writ directing the respondent, the State of Bombay, in which State State of Saurashtra had earlier merged, to withdraw or cancel the notification and to restore the village Pithadia with all collections and realisations made by it to the petitioner and restraining the respondent from giving effect to the notification.

The petitioner's contention is that the village had been granted to him absolutely and unconditionally for permanent enjoyment from generation to generation and the State could not resume it so long as any of the descendants of the petitioner was alive. He contends that President's recognition of him as Ruler of Vadia did not affect his rights to the village. The respondent's contention is that the grant was not absolute or unconditional but it was to remain in force so long as the petitioner continued to be a cadet of the family and that as on his being recognised as the Ruler

he ceased to be a cadet, the grant lapsed and the village reverted to the State. It is said that the Union of India being entitled to all the assets of the State of Vadia, the village has become its property since the date of the petitioner's recognition as the Ruler.

The question therefore is whether the grant lapsed on the grantee becoming the Ruler. That is a question depending on the terms of the grant. Capt. Webb in his compilation called "Political Practice in Kathiawad" has defined a 'Bhayat' as a cadet or the descendant of a younger branch of a Talukdar's family where the estate follows the rule of primogeniture. The grant was made by a document called a Lekh or a writing to which was attached a Hakpatrak which is a Statement of rights created by the Darbar to a Bhayat. Both these documents were registered before the Agency. The main portions of the Lekh were in these terms :

"Passed by Shree Vadia Darbar Shree Suragvala Bavavala, to long-lived Kumar Shree Viravala. To wit :- the Rule of primogeniture (i.e., the system of Heir-apparent and cadets) having been applied to this State, and you being our Kumar (son) younger than our eldest Kumar, long-lived Yuvaraj Shree Krishna Kumar Saheb, you are, by this Lekh, given, as Bhayat, for permanent enjoyment as Kapal Giras, from generation to generation, the village "Mota-Pithadia", a village of exclusive jurisdiction of this State, which is of our possession, enjoyment and ownership, with its village, Tal (village site), and Sim with all their boundaries, fields, Vadis, Kharo, Kharabo, etc., i.e., with all the boundaries of the said village, as Giras. You may enjoy the revenues thereof from the beginning of the Year Samvat 2000.

.....Giras as above having been given to you as Bhayat, a Hakpatrak (statement of rights) thereof, according to procedure has been given. The same has been attached herewith. You and your heirs and successors may enjoy the same. Map and Field-Book of this village have been made, true copies whereof have been got prepared and given to you".

The lekh conferred various other dignities, privileges, amenities and rights on the petitioner. Thus it is stated that the petitioner's marriage will be celebrated at the State expense and the State will arrange for his education, that no duties or taxes will be levied on the petitioner on account of his residence in Vadia proper, that the petitioner's complaint regarding Giras, i.e., the village granted, or any other civil matter would be heard without charging any court fee and he would be exempt from personal attendance in court in civil matters and that no process will be issued against him in criminal cases without the permission of the Ruler himself. All these dignities, rights and privileges are appropriate to a cadet of the Ruler's family, but have no meaning when applied to a Ruler.

In the Hak Patrak it is stated : "In future even if your descendants are joint or may have divided, any one Bhayat surviving from amongst your descendants shall enjoy the Sudharo Giras and it shall not revert to the State till any one Bhayat from amongst your descendants is living". It also states that the grantee will not sell or mortgage the Giras without the permission of the State.

The grant and the Hak Patrak read together lead to the inescapable conclusion that in its true nature the grant is a grant to a cadet of the family and the grant enures for his benefit as long as he remains a cadet. The expression "given as Bhayat" is not merely descriptive of the grantee, but indicates the true nature of the grant. Nor do we agree that the expression "given as Bhayat" merely indicates the purpose for which the grant is made but describes the nature of the tenure. The grant states in express terms that it is given as Bhayat for permanent enjoyment as Kapal-Giras, which means that

the grant is to a cadet as an appanage and continues from generation to generation as long as any of the descendants of the grantee is alive. But if the grantee ceases to be the younger branch and becomes heir-apparent by reason of the rule of primogeniture or ceases to be a cadet or Bhayat for any reason whatsoever, then the grant must come to an end. This is what the rights and liabilities mentioned in the grant itself and also in the Hak Patrak show; for example, with regard to the right of succession, the Hak Patrak states that even if one Bhayat from amongst the descendants survives he shall enjoy the Giras and there will be no reversion to the State.

This, in our opinion, shows that the grant enures as long as there is a Bhayat. If there is no Bhayat the grant lapses. If on a true construction the grant is of the nature indicated above, then no question of reading an implied term in the grant arises; nor is there any necessity of determining whether the petitioner has become a ruler in the sense in which his father was a ruler of the Vadia State. Whatever be the reason for which the petitioner has ceased to be a Bhayat, either by reason of the death of his elder brother or by reason of his becoming a ruler in the limited sense of the Constitution, he has ceased to be a Bhayat and the grant being given as Bhayat for permanent enjoyment as Kapal-Giras, it has come to an end.

In that view of the matter the petitioner must be held to have failed to make out any infringement of his fundamental right by reason of the notification dated May 23, 1952. The infringement which the petitioner complains of is deprivation of his property by State action and he bases his right on the terms of the grant. If the grant is not an absolute grant in the sense in which the petitioner contends, but is a grant which by its very nature contains a defeasance clause, then the petitioner cannot found his claim on any violation of his fundamental right.

The petition is therefore dismissed with costs.

Petition dismissed.

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