Promod Chandra Deb and Others

Vs

The State of Orissa and Others

Petitions Nos. 79 of 1957, 167 and 168 of 1958 and 4 of 1959

(CJI B. P. Sinha, A. K. Sarkar, J. R. Mudholkar, S. K. Das, N. Rajgopala Ayyangar JJ)

16.11.1961

JUDGMENT

SINHA, C.J. –

The Petitioners in these Writ Petitions, under Art. 32 of the Constitution, complain of interference with their rights under the several Khor Posh grants, and pray for writs of certiorari or mandamus and further orders or directions to the respondents for the enforcement of their alleged rights. In Writ Petition No. 79 of 1957, the first respondent is the State of Orissa, and the Union of India is the second respondent. In all the other Writ Petitions, the State of Orissa is the sole respondent. As most of the questions of law relating to the interpretation of the Constitution, or other laws hereinafter to be referred to, are common, the cases have been heard together. But in order to appreciate the points arising in these cases, it is necessary to state the facts of each case separately.

I. Writ Petition No. 79 of 1957.

In Writ Petition 79 of 1957, the petitioner is the younger brother of the present Raja of Talcher, which was an independent sovereign State before its merger. It was later incorporated in the State of Orissa. The Talcher State was a sovereign State of the Rajabahadur of Talcher, under the paramountcy of the British Government, before India attained Independence. As such a sovereign, the Rajah had absolute powers of disposal of the properties comprised in the State. The succession to the Rulership of the State is governed by the Mitakshara law, according to the rule of lineal primogeniture. The petitioner is a citizen of India and is the only younger brother of the present Raja to Talcher. The petitioner's father, the previous Ruler of Talcher, died in 1945 and was succeeded by the petitioner's elder brother, the present Raja of Talcher. According to immemorial and long established custom of the State, as also according to the Hindu Law of lineal primogeniture, the junior members of the family of the Rules, for the time being, were entitled to and were provided with suitable maintenance, either land or in money, to enable them to maintain themselves in accordance with their status as members of the Ruler's family. The grants of land, or its equivalent in money, or partly in land and partly in money, used to be called Khanja or Khor posh grants, and the grantees were known as Khanjadars or Khorposhdars. The nature and conditions of such grants have been laid down in Order 31 of the Rules, Regulations and Privileges of Khanjadars and Khorposhdars. Those "rules, regulations of Talcher etc. (1937)" states the law of the State. In accordance with the law aforesaid, the Khorposh grants made by the Ruler, for the time being, became the absolute private property of the grantee, being a male or a female member of the family of the grantor.

The petitioner was born in 1903, and in the same year the petitioner's father, who was then Ruler of

the State of Talcher, made a grant in perpetuity to the petitioner of 5 villages specified in the Schedule to the petition. The said grant conveyed to the petitioner full proprietary rights in the villages aforesaid. By an order, dated March 31, 1912, the Ruler aforesaid passed an order to the effect that the income of the 5 villages granted to the petitioner, as aforesaid, be collected by the State Officials and deposited in the State Treasury, and the petitioner should be paid in cash the equivalent of the income from the villages aforesaid, amounting to Rs. 5926 odd. By a subsequent order, dated September 8, 1929, the Ruler aforesaid directed the Settlement Officer, who was in charge of making the records up to date, to keep the aforesaid grant yielding a cash income of Rs. 5926 odd intact, to be enjoyed by the petitioner "in perpetuity under hereditary rights". The Ruler of the State, after making the necessary enquiries, directed, by his Order dated March 16, 1944, that the petitioner should be paid Rs. 6200 a year, as a cash allowance out of the State Treasury in lieu of the income from the villages granted to the petitioner, as aforesaid. Since then the petitioner was being paid regularly the allowance at the rate of Rs. 500 per month, till April 1949.

Going a little backwards, it is necessary to complete the narrative of events by stating that in August 1947, the present Raja of Talcher, the petitioner's elder brother, entered into an agreement with the Dominion of India after its formation after the Independence Act of 1947, and executed an Instrument of Accession, which was in the form as it appears in Appendix VIII at page 169 of the White Paper on Indian States. Another agreement, in form appearing in Appendix IX at page 173 of the White paper, was also entered into between the Ruler of Talcher and the Dominion of India. On December 14, 1947, an agreement, called the 'Merger Agreement', in the same form as Appendix XI at page 178 of the White Paper, was entered into between the Governor-General of India and the Raja of Talcher. The terms and effect of these transactions will have to be examined in detail later. On January 1, 1948, the State of Talcher merged in the Dominion of India in accordance with the Merger Agreement aforesaid. The petitioner claims that the Khorposh grant made to him, as aforesaid, was fully and unequivocally recognized by the State and that even without such recognition his rights before the merger of the State of Talcher in Orissa remained intact, and neither the Central Government nor the State Government could question or ignore those rights. As the petitioner did not receive his Khorposh allowance due for the month of April, 1949 he entered into correspondence with the Government of Orissa. In answer he received a letter, dated May 26, 1949, from the Sub-Divisional Magistrate of Talcher informing him that the payment of allowance in question could not be made until further instructions were received from the Government. As a result of further correspondent between the petitioner and the Government of Orissa, the petitioner received a letter, on June 22, 1949, to the following effect :

"With reference to your letter No. Nil dated 7th June, 1949, on the subject mentioned above, I am directed to say that as you have extensive landed property and are well off in life, Government of India have not allowed any monthly cash allowance. The decision of the Government of India is final in this matter and cannot be reconsidered."

It is this order of the Government which the petitioner challenges as invalid and interfering with his property rights. After entering into further correspondence with the Government of India, the petitioner received on September 7, 1956, a copy of the letter dated March 26, 1955, to the following effect :

"The Government of India are advised that the alleged grant of maintenance allowance to you by the Ruler of Talcher was never recognized by the Govt. of India or the State Govt. of Orissa. After the merger therefore no claim for payment of the said allowance can be enforced against either the State Govt. of Orissa or the Central Govt. The Govt. of India are further advised that even if, according to

the law applicable to the members of the ruling Family of Talcher you had a right to be maintained, that was rights against the Ruler of Talcher which is not legally enforceable against either the Govt. of Orissa or the Central Govt. who have not inherited or undertaken any obligation in the behalf.

As regards your contention based on the provisions of Articles 2 and 4 of the Merger Agreement signed by the Ruler of Talcher, I am directed to say that the Govt. of India do not consider that these have the effect of placing on obligation on the Government to continue your allowance."

The correctness and validity of the statements of fact and law contained in the letter aforesaid of the Government of India is challenged by this petition on the grounds that that Government's order aforesaid amount to an infringement of the petitioner's fundamental rights under Arts. 19(1)(f) and 31 of the Constitution and are also discriminatory, thus violating Art. 14 of the Constitution inasmuch as the other Khorposh grantees have been allowed to continue enjoying their similar rights. It was on these allegations that the petitioner moved this Court and obtained the Rule.

II. Writ Petition No. 167 of 1958.

The Petitioner in this case is the younger brother of the Raja of what was previously known as the State of Bamra, one of the native Sates in Orissa. The Ruler of Bamra possessed and exercised absolute rights - legislative, executive and judicial - in his territory, subject to the paramountcy of the British Government. The Ruler of Bamra also, like the other ruler similarly situated, acceded to the Dominion of India by an Instrument of Accession executed between him and the Governor-General of India on or about the 15th of August, 1947, in terms similar to the form appearing in Appendix VII of the White Paper, at page 165. There are similar allegations, as in the previous case, about the law and custom governing the grant of Khorposh to the members of the Ruling Family. In accordance with the law aforesaid and in exercise of his sovereign powers, the Ruler made the following 4 grants in favour of the petitioner.

"1. Land Revenue hereditary grant of Rs. 10,000 per annum out of the Revenue income of the village Balanda and 24 others in Bamra State grated by the Ruler on 24-3-47.

2. Land Revenue hereditary kharposh Mafi grant of Rs. 2,400 per year out of the income of village Nenei and 6 others granted by the ruler on 15-9-45.

3. Forest grant of Panguli and Prabhasuni reserve forests for reclaiming 1500 acres granted by Ruler on 27th December, 1947.

4. Tank at Deogarh granted by Ruler on 22-9-1947. All these properties have been duly recorded in Revenue registers."

After the grants aforesaid had been made in favour of the petitioner, who is the only surviving younger brother of the Ruler, the latter executed, on the December 30, 1947, the Agreement of Merger by which he transferred to the Dominion Government authority, jurisdiction and power for and in relation to the governance of Bamra State and also agreed to transfer the administration of the State of January 1, 1948. On June 8, 1949, the Government of Orissa, purporting to act in exercise of its powers under s. 4 of the Extra Provincial Jurisdiction Act (XLVII of 1947), read with Notification dated March 23, 1948, issued directions to the effect that the commitments, specified in the Schedule to the Notification, made by the Ruler of Bamra were not reasonable and bonafide in the opinion of the Provisional Government and were declared null and void and not binding on them, and shall stand annulled as from the date of the said commitments and that no Court shall

have jurisdiction to call into question the validity of the Order. The Schedule to the Notification aforesaid also made reference to the grants made in favour of the petitioner. Then the petition goes to make allegations as to why the petitioner was discriminated against on grounds of political bias. The petitioner also challenged the authority of the Government of Orissa, or of Central Government, to annul the said grants, and characterised the annulment as wholly void. As the petitioner's memorial and petition requesting the Orissa Government to annual their Order of June 8, 1949, aforesaid had proved unavailing, as would appear from the Government's letter dated June 26, 1957, the petitioner had no option left but to move this Court. The Orders aforesaid of the Government are challenged as null and void and ultra vires the powers of the Government, as violative of Arts. 19 and 31 of the Constitution.

III. Writ Petition 168 of 1958.

The petitioner in this case is the same as the petitioner in the Writ Petition 167 of 1958. After making allegations similar to those in the previous petition, he goes on to state that the Ruler of the Bamra State made the following Order on December 8, 1947.

"Bamra Darbar

Order

As my brother Barakumar Pratap Ganga Deb is going to marry soon and as the present maintenance grant will be insufficient to maintain himself and his family befitting his status and position, the present maintenance grant of Rs. 600 p.m. is increased to Rs. 1000 (one thousand) per month with effect from the 1st of December 1947.

#8th Dec., 1947. Sd- B.C. Tribhuban Deb. Raja & Ruler, Bamra State."##

The petitioner goes on to state that, not withstanding the protest of the petitioner, the increased amount of maintenance at Rs. 1000 per month, as granted by the Ruler, as aforesaid, was reduced by Mr. D. V. Rege, the Adviser to the Orissa State, by his letter dated June 11, 1949 to the following effect :-

"Dear Bara Kumar Sahib,

With the approval of Government of India your allowance has been increased from Rs. 7200 to Rs. 9600 per annum from 1-4-1948.

Your sincerely, Sd. D. V. Rege"##

This reduced amount of maintenance at the rate of Rs. 800 per month continued be to paid to the petitioner from April 1, 1948 till July 1, 1957. But after the passing of the Budget for 1957-58, during the discussion on the Orissa Appropriation Bill (II of 1957) on June 29, 1957, the then Chief Minister of Orissa, Dr. Hare Krishna Mahtab, suddenly, for political reasons, made a statement in the Assembly to the following effect :

"Government have decided that on principles and on grounds of expediency all allowances to relatives of the Rulers should be annulled with effect from 1st July, 1957, and the fact should be communicated to the Government of India, subject to the following conditions :-

(1) The existing allowances should be continued in respect of widowed Rajmatas and other widows subject to a maximum limit of Rs. 500 per month.

(2) If, as a result of annulment of these allowances, any hardship is caused to anybody, he or she may represent to Government for consideration of his or her case and Government after proper enquiry about the actual conditions and income of the representationist and after being satisfied about the genuineness of the grievance, may, in suitable cases, grant allowances to anybody upto a maximum limit of Rs. 500 p.m."

The result of this statement was that the petitioner's allowance was annulled. The petitioner's memorials and petitions to the State Government and to the Central Government authorities proved fruitless; hence the writ petition in respect of the annulment aforesaid.

IV. Writ Petition No. 4 of 1959.

The petitioners in this case are the mother and younger brother of the present Maharaja of the State of Kalahandi, previously known as the State of Kalahandi, one of the native States in Orissa. After the death of the late Maharaja Braja Mohan Deo of Kalahandi in 1939 at the age of 43, the maintenance allowance of Rs. 1200 per month was fixed for the first petitioner by the Political Department of the Government of India. She continued to get the allowance even after the merger of the State of Kalahandi with the Province of Orissa. The petitioner No. 2, as the younger brother of the Ruler of Kalahandi and in accordance with the law and custom prevailing in that area, was granted by the then Ruler, his brother, H. H. Maharaja P. K. Deo a maintenance allowance of Rs. 1200 per month. After the merger of the State in the State of Orissa and on the recommendation of Shri Rege, I.C.S., a maintenance allowance of Rs. 1000 per month was fixed for the petitioner in consultation with the Government of India. As a result of the statement made by the then Chief Minister of Orissa, dated June 28, 1957, quoted above, the petitioners have been deprived of their just claims to maintenance in accordance with the law. The petitioners' memorials to the State Government and to the authorities of the Central Government have produced no results; hence the Writ Petition against the stopping of the payment of allowances to the petitioners with effect from July 1, 1957.

In support of these petitions, three separate arguments have been addressed to us, and have covered a very wide field. Shri Viswanatha Sastri appeared in support of petition No. 79 of 1957; Shri Purshottam Trikamdass appeared in support of petition No. 167 of 1958 and No. 4 of 1959, and Shri N. C. Chatterjee appeared in support of the petition No. 168 of 1958. Though the arguments have been overlapping and not always consistent, the points urged on behalf of the petitioners in each case may be summarised as follows. The grants made by the Rulers in each case were in respect of the khorposh rights of the members of their family, which the Rulers, under the law both statutory and customary, recognised as the rights of the junior members of the family which is governed by the rule of Lineal Primogeniture. Generally the grants took the shape of landed property but very often the usufruct of the property was taken over by the State in lieu of a cash allowance. Whether the Khorposh grant took the form of land or of money, it was made by a sovereign Ruler. Every act of the Ruler, whether executive, legislative or judicial in character, with reference to modern democratic ideas of separation of power, has the force of law. In the hands of the Ruler for the time being, these distinctions did not hold good. Whatever they said or did in relation to the affairs of the State was law for the time being, which the Ruler could abrogate or modify according to his absolute power. But after the disappearance of the Rulers' sovereign powers, the succeeding power, whether it was the Government of India or the Province, and later the State of Orissa, was not

competent to abrogate the orders granting maintenance to the junior members of the family, according to the law of the land, without recourse to legislation by a competent body. In this connection reliance was placed on the decisions in the case of Director of Endowments, Government of Hyderabad v. Akram Ali [A.I.R. (1956) S.C. 60] and Madhaorao Phalke v. The State of Madhya Bharat [[1961] 1 S.C.R. 957]. Hence the Government of India had to get the Parliament to make the necessary legislation, if it intended to do away with the rights to Khorposh created by the previous Rulers of the States concerned. It was also contended that there was no entry either in List I or in List III, of the Constitution, which could authorise the Central Legislature to make a law abrogating those grants. It was further contended that in respect of some of the grants at least, the Government of India had recognised the rights of the grantees and had been making payments through the State of Orissa, in pursuance of those recognised rights. In the case of the petitioners in Writ Petition 168 of 1958 and 4 of 1959, it was further argued that the payments had been made to the grantees until June 1957. It was only in July, 1957, that the payments were stopped arbitrarily as a result of the statement made by the Chief Minister of Orissa, as stated above.

The learned Solicitor General, who appeared on behalf of the respondents, first raised a preliminary objection in respect of the first case (Writ Petition 79 of 1957) relating to the grant by the Ruler of Talcher. His contention was that it was the admitted case of the parties that the payment to the petitioner was stopped in April, 1949, and the petitioner was informed by the Government's order dated June 22, 1949 that the Government's decision to stop the payment was final and could not be reconsidered. That being so, the rights guaranteed by the Constitution could not be founded upon, in respect of a cause of action which arose before the Constitution. In the second case, namely Writ Petition 167 of 1958, the right, if any, has been abrogated by the Government's Notification dated June 8, 1949, hence in this case also the preliminary objection, if it has any force, applies. The other arguments, of the Solicitor General, which apply to all the cases, were to the effect that the grant, if any, was not grant of land but of money, and therefore, was not a grant properly so called; that there may have been a law relating to the making of Khorposh grants to junior members of the family of the Rulers governed by the Rule of Lineal Primogeniture, but the act of making each individual grant could not properly be characterised, as enacting a law; it could, at best, be an order in exercise of the powers of the Ruler giving effect to the law in question. Alternatively, it was argued that whether or not the making of a grant was enacting a law, and whatever its nature, it could be abrogated by the succeeding sovereign power, without recourse to legislation. It was further argued that the matter in controversy would be governed by the provisions of the Extra Provisional Jurisdiction Act (XLVII of 1947), which came into effect on December 24, 1947. Reliance was placed upon s. 3 of the Act which laws down that it "shall be lawful for the Central Government to exercise extra provincial jurisdiction in such manner as it thinks fit". It was pointed out that under sub-s. (2) of s. 3 of the Act, the Central Government had been authorised to delegate its jurisdiction, and this power the Government exercised in favour of the Provisional Government of Orissa. The terms of s. 4(1) to the effect that the Central Government may make such order as may seem to it expedient for the effective exercise of its jurisdiction under the Act, were also relied upon as the source of the authority for cancelling the Khorposh allowance in favour of the petitioners made by the ex-Rules. It was further contended that s. 5 of the Act validated the impugned orders of the Government, and whether or not they were legal, they "shall be valid as if they had been done according to the local law then in force in that area". And lastly, it was urged that, in any view of the matter, the orders impugned by the petitioners in these cases were acts of State, the legality of which could not be canvassed in a Municipal Court.

Before dealing with the arguments on the merits of the controversy, it is convenient first to deal with the preliminary objection raised with reference to the first two petitions, on behalf of the

respondents, to the effect that the orders passed before the coming into effect of the Constitution could not be challenged in a writ petition because no writ could be issued in respect of orders passed before the Constitution came into force. If the grants were in the shape of land, and if the Government had deprived the petitioners of those lands, it could have been argued with a good deal of force that the dispossession from the lands took place at a time when the Constitution was not in force. But it appears that in these cases the grants ultimately assumed the shape of money allowances payable at regular intervals. They were to be paid periodically. Hence, every periodic deprivation of the money allowance would give the petitioners a right to approach this Court for relief. It appears from the pleadings of the parties that the petitioners entered into prolonged correspondence insisting upon their rights under the grants by the former Rulers and trying to impress upon the Government the justness of their demands. It was only in 1957 that the petitioners realised that they had no hopes of any revision by the Government of the policy which they had adopted of cancelling those grants. In our opinion, therefore, the preliminary objection has to be overruled.

In order to determine the controversy on its merits, it is necessary to trace the history of the relationship between the Rulers and the Government of India before the territories concerned became a part of the territory of India. During the British regime, the Rulers of the Indian States (then called native States) enjoyed certain amount of sovereign powers, which were not uniform. The extent of their sovereignty under the suzerainty or the paramount authority of the British Government depended upon the several agreements between them. The position is thus described in the White Paper on Indian States (pages 32, para 71) :

"Till the lapse of Paramountcy, the Crown as represented by the operating through the Political authorities provided the nexus between the Indian States and the Central and Provincial Governments. The pivot of this arrangement was the Viceroy, who as Crown Representative represented to the Indian States the suzerainty of the British Crown while at the same time he was, in relation to British India, the head of the Government as Governor-General. The Indian Independence Act, 1947, released the States from all their obligations to the Crown".

After the coming into effect of the Indian Independence Act and the establishment of the Indian Dominion, as a result of negotiation between the Dominion of India and the Indian States, certain steps were taken towards the integration of those States with India. The first step was the accession of these States in accordance with the Instruments of Accession, which appear in Appendices VII and VIII at pages 165 to 173 of the White Paper. As a result of the accession, the three States with which we are now concerned - the States of Talcher, Bamra and Kalahandi - acceded to the Dominion of India "with the intent that the Governor-General of India the Dominion, Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the States.... such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August, 1947". This accession did not affect the continuance of the sovereignty of the Rulers entering into the agreement, save as provided by or under the Instrument of Accession. It, however, provided that in respect of such matters as are specified in the Schedule annexed to the Instrument, which may be compendiously described as "Defence, External Affairs and Communications", the Dominion Legislature may make laws which shall apply to the acceding States also. It is not necessary to notice the difference between the Instrument of Accession as contained in Appendix VII and that contained in Appendix VIII for the purposes of these cases. The second step was the signing of what has been termed "Standstill Agreement", the form of which

appears in Appendix IX at pages 173-74 of the White Paper. The acceding States signed this "Standstill Agreement" which provided for the continuance for the time being of all subsisting agreements and administrative arrangements in matters of common concern between the States and the Dominion of India. The first phase of the process of integration of the Indian States into the Indian Dominion was the accession of the States as aforesaid. The second phase followed on the merger of these States into the Dominion of India as a result of the 'Merger Agreement', in terms appearing in Appendix XI at pages 178-179 of the White Paper. In December 1947, these States merged with the Dominion of India by virtue of the Agreements of Merger, whereby the States ceded "to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the States and agreed to transfer the administration of the State to the Domination Government on the 1st day of January 1948". As a result of the 'Merger Agreement' signed by the Rules of these States on or after the 14th of December, 1947, but before the 1st of January, 1948, the Dominion of India was vested with sovereign authority and the ex-Rulers were left only with their private property and their annual Privy Purse. As these States which merged with the Dominion of India, as aforesaid, did not become part of the Province of Orissa until a much later date, it became necessary to provide for the administration of these States. Thus came into existence the Act, called the Extra Provincial Jurisdiction Act (XLVII of 1947). The Act authorised the Central Government, by itself or through its delegate, to exercise extra provincial jurisdiction in respect of areas outside a Province, which were acquired by the Central Government by treaty, agreement, grant usage, etc., as recited in the Preamble to the Act. In pursuance of the powers given to the Central Government under s. 3(2) of this Act, the Central Government delegated its power to the Government of Orissa to administer the territories which had acceded, as aforesaid, including the three States with which we are now concerned. This state of affairs continued until the coming into effect of the States' Merger (Governors' Provinces) Order, 1949, which came into effect on the first of August, 1949. Section 3 of the Order provides that as from the appointed day, namely, August 1, 1949, the States in question shall be administered in all respects as if they formed part of the Province of Orissa. Section 4 provides that all laws in force in a merged State before that day, including Orders made under s. 3 or s. 4 of the Extra Provincial Jurisdiction Act, 1947, shall continue in force until repealed, modified or amended by a competent legislature or other competent authority. Hence, any orders passed by the Central Government or its delegate, the Government of Orissa, under Act XLVII of 1947, shall have the effect of law, even though until the 1st of August, 1949, these States did not form part of the Province of Orissa. It will, thus, appear that the sovereignty, whatever it was, of the Rules of the States in question ceased on the execution of the Merger Agreement on or after the 14th of December, 1947, and before the 1st of January, 1948. Thereafter, on the 1st of January, 1948, the sovereignty in those States vested in the Central Government. The question, therefore, arises : How far the Central Government or its delegate, the Government of Orissa, until the merger of the territories in the Province of Orissa, as aforesaid, were bound by the laws prevailing in those States during the regime of the Rulers, who had gone out.

It has been strenuously argued on behalf of the respondents that the acts complained of by the petitioners were acts of State, into the legality of which the Municipal Courts had no jurisdiction to examine. The question of the nature and effect of what are characterised as acts of State has been discussed in a number of cases, which went up to the Privy Council, and later in cases which came up to this Court. In the case of the Secretary of State of India v. Kamachee Boye Sahaba [(1859) 7 M.I.A. 476], their Lordships of the Privy Council stated the law in these terms :

"The transactions of independent States between each other are governed by other laws than those which Municipal Courts administer; such Courts have neither the means of deciding what is right,

nor the power of enforcing any decision which they may make".

In that case, the Raja of Tanjore, an independent sovereign Chief, who, by virtue of Treaties, was under the protection of the East India, Company, died without leaving male issue. Thereupon the East India Company, in exercise of their sovereign power, seized the Raj of Tanjore on the ground that the dignity of the Ran was at Stake for want of male heir. It was held by the Privy Council that as the seizure was made by the British Government, acting as a sovereign power, through its delegate the East India Company, it was an act of State, and that, therefore, a Municipal Court had no jurisdiction to enquire into the property or legality of the transaction. In the course of the judgment, Lord Kingsdown further observed "that acts done in the execution of these sovereign powers were not subject to the control of the Municipal Courts, either of India or Great Britain, was sufficiently established by the cases of the Nabob of Arcot v. The East India Company, in the Court of Chancery, in the year 1793; and The East India Company v. Syed Ally, before the Privy Council in 1827". In that case, an argument was advanced before the Privy Council, that the seizure of the Raj might be justified as an act of State, but the seizure of the private property of the Raja was not so justifiable. In dealing with that argument, their Lordships of the Privy Council made the following very significant observations :

"But then, it is contended, that there is a distinction between the public and private property of a Hindoo Sovereign, and that although during his life, if he be an absolute Monarch, he may dispose of all alike, yet on his death some portions of his property, termed his private property, will go to one set of heirs, and the Raj with that portion of the property which is called public, will go to the succeeding Rajah.

It is very probable that this may be so; the general rule of Hindoo inheritance is partibility, the succession of one heir, as in the case of a Raj, is the exception. But assuming this, if the Company, in the exercise of their Sovereign power, have thought fit to seize the whole property of the late Rajah, private as well as public, does that circumstance give any jurisdiction over their acts to the Court at Madras ? If the Court cannot enquire into the acts at all because it is in act of State, how can it inquire into any part of it, or afford relief on the ground that the Sovereign power had been exercised to an extent which Municipal law will not sanction ?".

This decision of the Privy Council was followed in the case of Cook v. Sir James Gordon Sprigg [[1899] A.C. 572]. That was a case in which the appellant claimed right to certain concessions relating to minerals, forests, trading and other rights, etc., in Eastern Pondoland, granted to them by the paramount chief of Pondoland. The suit was successfully defended on the ground that the grant did not bind the Imperial or the Colonial British Government to recognise the said concessions. The Lord Chancellor, delivering the judgment of the Judicial Committee, observed as follows, and almost adopted the language of Lord Kingsdown :

"The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an act of State and treating Sigcau as an independent Sovereign - which the appellants are compelled to do in deriving title from him. It is a well-established principle of law that the transactions of independent States between each other are governed by other laws than those which municipal courts administer.

It is no answer to say that by the ordinary principles of international law private property is respected by the sovereign which accepts the cession and assumes the duties and legal obligations of the former sovereign with respect to such private property within the ceded territory. All that can be

properly meant by such a proposition is that according to the well-understood rules of international law a charge of sovereignty by cession ought not to affect private property, but no municipal tribunal has authority to enforce such an obligation."

A similar question arose before their Lordships of the Privy Council in a case from India, reported as Secretary of State for India v. Bai Rajbai [(1915) L.R. 42 I.A. 229]. In that case, the plaintiffs sued for a declaration of their rights to certain property and they questioned the orders of the Government of Bombay to the effect that they had no indefeasible rights in the property as claimed by them. The property was situate in the District of Ahmedabad, which was ceded by the Gaekwar to the British Government in the year 1817. The plaintiffs (respondents before the Privy Council) claimed the title to the property in the right of a grantee from the Mogul Emperors. While examining the question as to what was the precise relations in which the respondents stood to the Bombay Government at the time of cession of the territory, as aforesaid, and as to what were the legal rights enforceable in the tribunals of the new sovereign, their Lordships stated the legal position as follows :

"The relation in which they stood to their native sovereigns before this cession and the legal rights they enjoyed under them, are, save in one respect, entirely irrelevant matters. They could not carry in under the new regime the legal rights, if any, which they might have enjoyed under the old. The only legal enforceable rights they could have as against their new sovereign were those, and only those, which that new sovereign, by agreement expressed or implied, or by legislation, chose to confer upon them. Of course this implied agreement might be proved by circumstantial evidence, such as the mode of dealing with them which the new sovereign adopted, his recognition of their old rights, and express or implied election to respect them and be bound by them, and it is only for the purpose of determining whether and to what extent the new sovereign has recognised those anti-cession rights of the kasbatis, and has elected or agreed to be bound by them, that the consideration of the existence, nature, or extent of these rights becomes a relevant subject for inquiry in this case. This principles is well established, though it scarcely seems to have been kept steadily in view in the lower Courts in the present case. It is only necessary to refer to two authorities on the point, namely, the case of Secretary of State for India v. Kamachee Boye Sahaba, decided in the year 1859, and Cook v. Sprigg, decided in the year 1899."

Their Lordships also observed that in deciding the question as to whether or not the new Government had recognised the pre-existing rights and, if so, to what extent, the burden of proof rested upon those who made such claims.

In a later decision of the Judicial Committee of the Privy Council in the case of Vajesingji Joravarsingji v. Secretary of State for India in Council [(1924) L.R. 51 I.A. 357], the questions as to the significance of 'act of State' and as to the rights of the inhabitants of the territory after it has been acquired by a new sovereign, whether by conquest, treaty or otherwise have been discussed by Lord Dunedin. In the course of his judgment, after referring to the previous authorities bearing on the questions, he made the following observations, which put in a nutshell the entire legal position.

"But a summary of the matter is this : when a territory is acquired by a sovereign state for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rules of predecessors

avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal Courts. The right to enforce remains only with the high contracting parties. This is made quite clear by Lord Atkinson when, citing the Pongoland case of Cook v. Sprigg he says : "It was held that the annexation of territory made an act of state and that any obligation assured under the treaty with the ceding state either to the sovereign or the individuals is not one which municipal Courts are authorised to enforce."

In that case the Privy Council was called upon to determine the rights of the plaintiffs as Taluqdars in respect of land in the Panch Mahals, which were in the domain of the Scindia of Gwalior until December 12, 1860, when the Ruler ceded that territory to the British Government by a treaty. The plaintiffs in that case claimed proprietary rights in the Taluqs, whereas the Secretary of State for India, who was the contesting respondent, asserted that they were ordinary lessees holding their lands at the pleasure of the Government. In that case it had been argued before the Judicial Committee that the plea of act of State not having been specifically taken in the Courts below, that plea should not have been given effect to. This argument was met by their Lordships of the Privy Council by observing that no such specific plea using the words 'act of State' was necessary inasmuch as the plaintiffs themselves had admitted in the plaint that the territory had been ceded by the previous Ruler, the Scindia of Gwalior, to the British Government. The plaintiff had the onus cast on them of showing the acts of acknowledgment of their rights, which they claimed, by the new sovereign. Another argument raised on behalf of the plaintiffs was that one of the terms of the treaty was that old rights shall be recognised and that, therefore, their rights as proprietors still subsisted. On this part of the case, their Lordships observed that such a general statement in a proclamation only means this that the new government will recognise such rights as upon investigation by its officers it found those rights substantiated. The new Government had not thereby renounced its right to recognise only such titles as it considered fit and proper to recognise, and the Municipal Courts were not thereby empowered to investigate the rights claimed.

Where territory has been annexed to a new sovereign by treaty, conquest, cession or otherwise, the position in law is clear. But where there is no complete cession of territory but only the grant of power and jurisdiction whereby sovereign authority is vested in another State, the question has arisen whether the latter State has the right to legislate on matters which are already governed by law promulgated by the State in which the territory still remains vested. That question was raised in the case of Dattatraya Krishna Rao Kane v. Secretary of State for India [[1930] L.R. 57 I.A. 318]. The case related to what is know as the Berar, now forming part of the State of Maharashtra. By the treaty of 1853, H.H. The Nizam of Hyderabad had assigned to the British Government the districts collectively called the Berar, in lieu of certain expenses relating to the army, etc. As a result of the arrangement, H.H. the Nizam leased in perpetuity to the British Government that territory. The territory formed the subject matter of subsequent treaties in 1860 and 1920, whereby full sovereignty over the assigned districts was reaffirmed in favour of the British Government. The British Government was to continue to have full and exclusive jurisdiction and authority over the assigned districts and the power to administer them as the British Government thought fit and proper. In pursuance of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 57) an Order in Council was made in 1902 authorising the Governor-General of India in Council to deal with those territories, on behalf of His Majesty. In pursuance of that power, the impugned law (The Berar Alienated Villages Tenancy Law, 1921) was enacted in 1921 it was held by their Lordships of the Judicial Committee repelling the appellant's contention that the enactment of 1921 was ultra vires that the Law of 1921, aforesaid, promulgated by the Governor-General in Council, was a valid piece of legislation and was effective to interfere with pre-existing rights.

The still later decision of their Lordships of the Judicial Committee in the case of Secretary of State v. Sardar Rustam Khan [[1941] L.R. 68 I.A. 109] is also very instructive in so far as it reviewed the older decisions and reiterated the law as summarised by Lord Dunedin in the decisions just noticed in the case of Vajesingji Joravarsingji v. Secretary of State [[1924] L.R. 51 I.A. 357]. In that case their Lordships had to consider the effect of the Treaty of 1903 between the Khan of Kalat and the Government of India whereby the former ceded in perpetuity to the latter, in consideration of the payment of an annual rent, a certain territory. It was held that the transaction was, in fact, a perpetual lease of the territory at a quit rent and that the territory itself did not become part of the British Dominions, though the Khan of Kalat had made over the whole of his sovereign rights. In this case, their Lordships had also to consider the effect of the provisions of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37). Their Lordships held that by virtue of the Treaty and the provisions of the Foreign Jurisdiction Act, the Government of India had acquired full sovereign rights and had, therefore, the right to recognise or not to recognise existing titles to land, thus completely ousting the jurisdiction of the Municipal Courts to investigate and to pronounce upon claims to those rights.

The decisions referred to above have been noticed with approval by this court in the case of Thakur Amar Singhji v. State of Rajasthan [[1955] 2 S.C.R. 303, 335, 336], M/s. Dalmia Dadri Cement Co. v. The Commissioner of Income-tax [[1959] S.C.R. 729, 739, 744], The State of Saurashtra v. Memon Haji Ismail Haji [[1960] 1 S.C.R. 537] and in Jagannath Agarwala v. State of Orissa [[1962] 1 S.C.R. 205].

On an examination of the authorities discussed or referred to above, the following propositions emerge. (1) 'Act of State' is the taking over of sovereign powers by a State in respect of territory which was not till then a part of its territory, either by conquest, treaty of cession, or otherwise, and may be said to have taken place on a particular date, if there is a proclamation or other public declaration of such taking over. (2) But the taking over full sovereign powers may be spread over a number of years, as a result of a historical process. (3) Sovereign power, including the right to legislate for that territory and to administer it, may be acquired without the territory itself merging in the new State, as illustrated in the case of Dattatraya Krishna Rao Kane v. Secretary of State for India in Council [(1930) L.R. 57 I.A. 318]. (4) Where the territory has not become a part of the State the necessary authority to legislate in respect of that territory may be obtained by a legislation of the nature of Foreign Jurisdiction Act. (5) As an act of State derives its authority not from a municipal law but from ultra-legal or supra-legal means, Municipal Courts have no power to examine the propriety or legality of an act which comes within the ambit of 'act of State'. (6) Whether the act of State has reference to public rights or to private rights, the result is the same, namely, that it is beyond the jurisdiction of Municipal Courts to investigate the rights and wrongs of the transaction and to pronounce upon them and, that, therefore, such a Court cannot enforce its decisions, if any. It may be that the presumption is that the pre-existing laws of the newly acquired territory continue, and that according to ordinary principles of International Law private property of the citizens is respected by the new sovereign, but Municipal Courts have no jurisdiction to enforce such international obligations. (7) Similarly, by virtue of the treaty by which the new territory has been acquired it may have been stipulated that the pre-cession rights of old inhabitants shall be respected, but such stipulations cannot be enforced by individual citizens because they are no parties to those stipulations. (8) The Municipal Courts recognised by the new sovereign have the power and the jurisdiction to investigate and ascertain only such right as the new sovereign has chosen to recognise or acknowledge by legislation, agreement or otherwise. (9) Such an agreement or recognition may be either express or may be implied from circumstances and evidence appearing from the mode of dealing with those rights by the new sovereign. Hence, the Municipal Courts have the jurisdiction to find out whether the new sovereign has or has not recognised or acknowledged

the rights in question, either expressly or by implication, as aforesaid. (10) In any controversy as to the existence of the right claimed against the new sovereign, the burden of proof lies on the claimant to establish that the new sovereign had recognised or acknowledged the right in question.

Applying those principles to each of the cases in hand, the position appears to be as follows. In Writ Petition 79 of 1957, the Talcher State merged in the territory of India with effect from January, 1, 1948. Whatever rights the ex-Ruler of Talcher may have conferred upon the petitioner those rights could be enforced against the respondents only in so far as they have been recognised or acknowledged by the new sovereign, the Government of India, the question therefore arises whether the rights claimed by the petitioner in this case had been recognised by the Government of India by legislation or otherwise. It has already been observed that the State of Talcher become part of the territory of India certainly with effect from the first of January, 1948, as a result of the Merger Agreement, as aforesaid. There is also no doubt that the grant made by the ruler of Talcher in favour of the petitioner continued to be effective until the Merger. The nature and conditions of such grant of Khorposh are governed by the provisions of the laws of that State as embodied in order 31 of the "Rules and Regulations of Talcher, 1937". Under the laws of Talcher, the petitioner had been enjoying his Khorposh rights until the cash grant, as it became converted in 1943-44 as aforesaid, was stopped by the State of Orissa, in April, 1949. On the first of January, 1948, the petitioner became a subject of the Dominion of India, on his territory merging in the territory of India. It has been argued on behalf of the petitioner by Shri Viswanatha Sastri that as from the 1st of January, 1948, on the merger, there was a complete charge over of sovereignty and the Dominion of India got full and exclusive authority, jurisdiction and power in relation to the erstwhile territory of Talcher State; and that as soon as that happened, the Constitution Act of India then in force (Government of India Act 1935 as amended by the Indian Independence Act) became applicable to the inhabitants of Talcher also. That being so, they also became entitled to the benefit of s. 299(1) of the Constitution Act of 1935, which reads that "no person shall be deprived of his property save by authority of law". He relied upon the decision of the House of Lords in the case of Johnstone v. Pedlar [(1921) L.R. 2 A.C. 262] in which the plaintiff's claim for damages brought by a friendly alien, resident in the United Kingdom against an officer of the Crown in respect of wrongful seizure and detention of his property was decreed. It was further held that the defendant's plea that the property had been detained by direction of the Crown as an act of State was not a good defence to the action. In that case Viscount Cave stated the proposition of law and his opinion on that proposition in these words :-

"My Lords, counsel for the appellant contended for the broad proposition that, where the personal property of an alien friend resident in this country in seized and detained by an officer of the Crown, and his act is adopted and ratified by the Crown as an act of State, the alien is without legal remedy. In my opinion this proposition cannot be sustained.

When a wrong has been done by the King's officer to a British subject, the person wronged has no legal remedy against the Sovereign, for 'the King can do no wrong'; but he may sue the King's officers for the tortious act, and the latter cannot plead the authority of the Sovereign, for "from the maxim that the King cannot do wrong it follows, as a necessary consequence, that the King cannot authorize wrong".

In the course of his Judgment in that case Lord Atkinson made the following observations with reference to the decision of Lord Halsbury in the case of Cook v. Sprigg [[1899] A.C. 572].

"The last words of Lord Halsbury's judgment clearly suggest that the Government of this country

cannot assert as a defence against one of their own subjects that an act done to the letter's injury was an act of State, since such a subject clearly could not rely on his own sovereign bringing diplomatic pressure against himself to right the subject's wrong. In conformity with this principle it was held in Walker v. Baird ((1892) A.C. 491) that where the plaintiffs are British subject in an action for trespass committed within British territory in time of peace it is no answer that the trespass was an act of State, and that thereby the jurisdiction of the Municipal Courts was ousted."

Lord Sumner, in the course of his opinion, referred to the argument based upon the case of Buron v. Denman [2 Ex. 167] that the executive has, as against aliens, a general right to commit by its agents what would be an actionable wrong in private persons. With reference to that argument, Lord Sumner made the following observations :

"My Lords, the speculation is interesting but, as I think, fallacius. Buron v. Denman (2 Ex. 167) is a case rather of the inability of the Court than of the disability of the suitor. Municipal Courts do not take it upon themselves to review the dealings of State with state of or Sovereign with Sovereign. They do not control the acts of a foreign State done within its own territory, in the execution of sovereign powers so as to criticise their legality or to require their justification.....".

Lord Phillimore, in the course of his opinion, while dealing with the defence set up by the official of the Crown, made the following observations :

"The defence set up in the present case is sometimes called the defence of an act of State. As regards this way of looking at it, I cannot put the matter better or more tersely than as I found it put in one of the reasons given by the successful plaintiffs in their case as respondents before the Privy Council in Walker v. Baird ((1892) A.C. 491, 494) : "Because between Her Majesty and one of her subjects there can be no such thing as an act of State". And this proposition was finally accepted in the case of Walker v. Baird".

Lord Phillimore, after discussing a number of authorities and the propositions laid down by them, concluded his opinion in these words :-

"From these propositions it would seem to follow that an alien ami complaining of a tort is in the position of an ordinary subject, and that no more against him than against any other subject, can it be pleaded that the wrong complained of was, if a wrong, done by command of the King or was a so-called act of State."

Relying upon those observations, the learned counsel for the petitioner contended, in the first instance, that when the Government of India, or its delegate the Government of Orissa, deprived the petitioner of his allowance in 1949, as aforesaid, it infringed the constitutional guarantee contained in s. 299(1) of the Constitution Act of 1935, and that the reliance upon act of State by way of defence was not tenable because, it was further argued, the sovereign cannot exercise an act of State against his own subject. The argument is very plausible and attractive, but we need not pronounce upon it in view of our conclusion, as will presently appear, with reference to his alternative argument based upon recognition. The argument is that the inhabitants of a territory acquired by a new by a new sovereign by conquest, cession or otherwise can make good in the municipal courts such rights as have been recognised by the new sovereign. In this connection, reliance was placed upon the provisions of sub-para (b) of paragraph 4 of the Administration of Orissa States Order, 1948 (which we shall for the sake of brevity call the Order of 1948). It has to be recalled that on the 1st of January 1948, the Government of Orissa made the Order of 1948. This order was made by the

Government of Orissa in exercise of the powers conferred by s. 4 of the Extra Provincial Jurisdiction Act, 1947, as a delegate of the Government of India. Paragraph 4 of the Order of 1948 read as follows :-

"4. Laws to be applied - (a) The enactments specified in the first column of the Schedule hereto annexed shall, so far as circumstances admit and subject to any amendments to which the enactments are for the time being generally subject, in the territories to which they extend, apply to all Orissa states and any provision of any law in force, whether substantive or procedural and whether based on custom and usage or statues, in any of the Orissa States, which is repugnant to any provision of any of the said enactments shall, to the extent of the repugnancy, cease to effect from the date of commencement of this Order :

Provided that the further modifications and restrictions set forth in the said Schedule shall be made in the enactments applied :

Provided further that for the purposes of facilitating the application of the said enactments any court having jurisdiction in the Orissa States may construe the provisions thereof and notifications, orders, rules, regulations, forms or bye-laws made or issued thereunder, with such alterations not affecting the substance as may be necessary or proper to adopt them to the matter before the Court :

Provided further that in the enactments as so applied (except where the context or modifications hereinbefore referred to otherwise require), reference to "British India" and "Central Government" shall be construed as references to "all the provinces of India and Orissa States" and "the Provincial Government" respectively.

(b) As respects to those matters which are not covered by the enactments applied to the Orissa States under sub-paragraph (a), all laws in force in any of the Orissa States prior to the commencement of this Order, whether substantive or procedural and whether based on custom and usage of statutes, shall, subject to the provisions of this Order, continue to remain in force until altered or amended by an Order under the Extra-Provincial Jurisdiction Act, 1947 (XLVII of 1947).

Provided that the powers that were exercised by the Ruler of each such State under any of those laws prior to the commencement of this order shall be exercised by the Provincial Government or any other officer specially empowered in this behalf by that Government.

Explanation - In this sub-paragraph the expression "laws" includes rules, regulations, bye-laws and orders.

(c) As respects those matters regarding which the enactments applied under sub-paragraph (a) or the laws continued in force under sub-paragraph (b) are inapplicable, civil criminal and revenue jurisdiction in the Orissa States shall be exercised in accordance with the principles of justice, equity and good conscience".

Under sub-para (a) certain enactments specified in the first column of the Schedule annexed to the Order of 1948 were applied to the Orissa States including Talcher, subject to certain amendments not material in this connection. The enactments so specified in the Schedule did not in any way affect the custom or the law under which the grant in favour of the petitioner had been made, and under sub-para (b) the law of the State of Talcher, as contained in the Regulations aforesaid 1937 continued in operation, subject, of course, to the provisions of the order until altered or amended by an order under the Extra Provincial Jurisdiction Act, 1947. It is contended on behalf of the

petitioner that by virtue of the operation of sub-paragraph (b) of paragraph 4 of the Order of 1948, the new sovereign recognised the legal right of the petitioner to receive his maintenance allowance under the grant by the previous Ruler of Talcher.

In this connection we may notice the argument advanced by the learned Solicitor-General on behalf of the respondents that there was no change-over of de jure sovereignty on the 1st of January, 1948, as contended on behalf of the petitioner, and that such a change-over could not be deemed to have taken place until July 27, 1949, when, as a result of the promulgation of the Order know as the States' Merger (Governor's Provinces) Order, 1949 (Appendix XLIV, page 297 of the White Paper), the Orissa States, including Talcher, were integrated in the Province of Orissa. In our opinion there is no substance in this contention for the simple reason that the question is not whether or when Talcher became a part of the Province of Orissa, or subsequently of the State of Orissa, on the advent of the Constitution. The question in really is on what date can the State of Talcher be said to have completely merged the Dominion of India within the meaning of s. 5 of the amended Government of India Act, 1935. Under that section, the Dominion of India comprised not only the Provinces, called "Governors' Provinces", or Chief Commissioners' Provinces, but also "the Indian States acceding to the Dominion of India in the manner hereinafter provided" (s. 5(c)). We have already pointed out, while tracing the relationship between the people of the Indian States and the Dominion of India, and later the Union of India, that as a result of the Merger Agreements, referred to above, those States, including the State of Talcher, completely merged in the Dominion of India on the 1st of January 1948.

But then it was argued by the learned Solicitor-General that, alternatively, assuming that Talcher had become a part of the Dominion of India in January, 1948, the grant made in favour of the petitioner was not a law, and was neither recognised nor continued in force by virtue of sub-para. (b) of paragraph 4 of the Order of 1948. It is, therefore, necessary to consider whether the grant in favour of the petitioner had itself the force of law in the State of Talcher. In our opinion, the decisions of this Court, particularly (1) Thakur Amar Singhji v. State of Rajasthan [[1955] 2 S.C.R. 303-335, 336] : (2) M/s. Dalmia Dadri Cement Co., Ltd. v. The Commissioner of Income-Tax [[1959] S.C.R. 729, 739, 744] and Madharao Phalke v. The State of Madhya Bharat [[1961] 1 S.C.R. 957] fully support the conclusion that whether the act of the former rulers in making the grant partook of the character of legislative, or executive action, it had the effect of law, and, secondly, that the rulers contained in Order 31 of the Rules and Regulations of the State of Talcher, 1937, had the effect of law and had been continued in force, in the absence of any legislation to the contrary. The last mentioned case is particularly opposite to the facts and circumstances of this case. The order 31 of the Rules and Regulations aforesaid of the State of Talcher stand on the same footings as the Kalambandis which were the subject matter of the decision in that case. The Rules and Regulations, even as the Kalambandis in that case, have the force of law and would be existing law within the meaning of Art. 327 of the Constitution. The provisions of sub-para. (b) of para. 4 of the Order of 1948, therefore, clearly applied and the Regulations of 1937 continued in force. The explanation to the sub-paragraph (b) says in express terms that the expression "laws" includes rules, regulations, bye-laws and orders. In view of the width and amplitude of the provisions of sub-para. (b) of paragraph 4, the conclusion is irresistible that the new sovereign, by the legislative Order of 1948, had recognised the customary grant in favour of the Khorposhdhars of Talcher, including the petitioner. Of course, the recognition is subject to the reservations, namely, (1) to the provisions of the Order of 1948, and (2) to any alteration or amendment of the Order by any legislation under the Extra Provincial Jurisdiction Act of 1947.

In this connection, we may here notice the further argument advanced by the learned Solicitor-

General that even if the petitioner were entitled to take advantage of the provisions of sub-para. (b) of paragraph 4 of the Order of 1948, the impugned order stopping the grant could be supported with reference to the provisions of ss. 3(1) and (5) of the Extra Provincial Jurisdiction Act of 1947. Section 3(1) is in general terms and provides that "it shall be lawful for the Central Government to exercise extra provincial jurisdiction in such manner as it thinks fit". This provision, which is in general terms, authorises the Central Government to exercise extra provincial jurisdiction in such manner as it thinks fit". This provision, which is in general terms, authorises the Central Government to exercise extra provincial jurisdiction in such manner as it thinks fit, which means, in accordance with the subsequent provisions of the Act, or orders passed under the provisions of the Act. Those sections, ss. 3(1) and 4, have to be read harmoniously so as not to make the provisions of s. 4 nugatory. Sub-section (2) of s. 4 enables the Central Government to make any "order" in respect of matters specified in cls. (a), (b), (c) and (d) therein; and where an "order" has already been made by a competent authority under s. 4 of the Act, that order can be superseded only by another valid order under that very section. Section 3(1) cannot, therefore, be construed so as to override the provisions of s. 4.

With reference to the provisions of s. 5 of the Act, which reads,

"Every act and thing done whether before or after the commencement of this Act, in pursuance of any extra provincial jurisdiction of the Central Government in an area outside the Provinces shall be as valid as if it had been done according to the local law then in force in that area",

it has to be remembered that the Act was enacted with a view to arming the Central Government with powers to make provision for the administration of such areas as came into the Dominion of India as a result of the process of integration as discussed above, and which areas were not within the ambit of any Governor's or Chief Commissioners' Provinces. In order, therefore to fill the legal vacuum for the time being, the Act was passed to regularise every act and thing done even before the enactment, as if it had been done according to the local law then in force in that area. Anything could be done in such a local area according to the laws of that area by authorities empowered to do so, but the functionaries of the Government of India or of its delegate, would have no jurisdiction so to function except by virtue of the provisions of s. 5. The section, thus, clothed such functionaries with legal authority in respect of an act or thing done, which otherwise would have been illegal. But this section cannot be construed so as to mean that those functionaries had been empowered to abrogate the laws which had been continued in force by virtue of s. 4 of the Act, or by virtue of an order made in accordance with the provisions of s. 4 of the Act. In other words, s. 5 cannot be read so as to make the provisions of s. 4, or of orders passed under that section, otiose. All the sections of the Act have to be read, it must be repeated, in a harmonious way so as to give full effect to each one of the provisions of the Act. It must, therefore, be held that s. 5 did not authorise the functionaries of the Government of India, or of its delegate, to infringe the laws which had been continued in force by virtue of s. 4, using the word "laws" in their most comprehensive sense, in accordance with the provisions of the Act itself. As a result of these considerations, it must be held that the respondents have no justification for stopping the grant. The application must, therefore, be allowed, and a writ issued directing the Government to continue the allowance as from the date on which it was withheld. The petitioner is entitled to his costs.

In the second case (Writ Petition 167 of 1958), it must be held, in accordance with the decision in the case just decided, that the petitioner had the right claimed by him. But this case is met by the Order dated June 8, 1949, which was in terms made under s. 4 of the Extra Provincial Jurisdiction Act of 1947. Such an order has the effect of law and was not a mere executive flat, as contended on

behalf of the petitioner. By an order made under the provisions of the Act aforesaid, the Central Government clearly indicated its intention of annulling the grant. The Order passed under the Act has in terms been characterised as of a legislative character; hence it has the effect of abrogating the grant so far as the petitioner was concerned. Whether that order of annulment was proper or improper, just or unjust, is not a matter which this Court can investigate and pronounce upon. It has not been contended before us that the order annulling the grant was ultra vires the provisions of the Act, and, therefore, of no effect. It must, therefore, be held that the rights claimed by the petitioner in this case have been validly terminated by the respondents. This application must, therefore, be dismissed, but, in the circumstances, without costs.

In the third case (Writ Petition No. 168 of 1958) in which the petitioner is the same as in the second case, the position is different, because by the order dated June 11, 1949, the Government recognised the right to a maintenance at Rs. 800 per month, in modification of the previous grant. Not only was this grant recognised, but the right thus recognised was given effect to, because it is common ground that payment continued to be made till July 1, 1957. The payment was stopped only as a result of the statement made by the Chief Minister in the Legislative Assembly on June 29, 1957. As the right claimed in this case had been recognised by the Government, and implemented, it could not be stopped by a mere fiat of the Government. The petitioner, therefore, is entitled to the declaration that his right is intact and to a writ or mandamus to the respondent to carry out its obligations.

In the fourth case (Writ Petition 4 of 1959), the position is the same as in the third case, just disposed of. In this case also, the petitioners' rights were recognised in respects of maintenance allowance of Rs. 1200 per mensem for the first petitioner and the reduced maintenance allowance of Rs. 1000 per mensem for the second petitioner. These allowances continued to be paid until they were stopped as a result of the statement aforesaid. The petitioners, therefore, are entitled to the same relief as in the previous case (Writ Petition 168 of 1958). The petitioners in Writ Petition 168 of 1958 and Writ Petition 4 of 1959 are entitled to their costs.

MUDHOLKAR, J. –

We agree. We could, however, like to add a few words. In the course of his argument Mr. Viswanatha Sastri stated that since the Talcher State was merged in the Dominion of India on January 1, 1948, there was complete change over of sovereignty, that as from that date the residents thereof became entitled to the benefit of s. 299(1) of the Constitution Act, 1935, that the Act of the Orissa Government in depriving the petitioner in W.P. 79 of 1957 of his maintenance grant in the year 1949 was in violation of that provision and that consequently the order made in that behalf was unconstitutional. He also contended that the action of the Orissa Government could not be regarded as an act of State because there can be no act of state by sovereign against his own subject. Referring to this argument My Lord the Chief Justice in his judgment has observed : "The argument is very plausible and attractive, but we need not pronounce upon it in view of our conclusion, as will presently appear, with reference to his alternative argument based upon recognition." The learned Chief Justice went on to deal with the alternative argument advanced by Mr. Viswanatha Sastri and accepted it.

While we agree with the conclusions reached by My Lord the Chief Justice on the alternative argument of Mr. Viswanatha Sastri and also agree with what My Lord has said with regard to the other writ petitions, we would like to state our view on the first point urged by Mr. Viswanatha Sastri. In our opinion s. 299(1) of the Constitution Act of 1935 did not help grantees from the former rules whose rights had not been recognized by his new sovereign in the matter of

establishing their rights in the municipal courts of the new sovereign because that provision only protected such rights as the new citizen had at the moment of his becoming a citizen of the Indian Dominion. It did not enlarge his rights nor did it cure any infirmity in the rights of that citizen : This is the view which we have taken in our judgment in State of Gujarat v. Jamadar Mahomed Abdulla [[1962] 3 S.C. B. 970]. In that case the rights of the grantees from the former ruler of Junagadh were not recognised at any time by the Dominion of India and so we held that even after becoming citizens of the Indian Dominion they could not assert those rights in the municipal courts of the Dominion of India. We adhere to that view and reject the first argument of Mr. Viswanatha Sastri. Since we agree with the rest of the judgment there is nothing more that we need say.

Petitions 79 of 1957. 168 of 1958 and 4 of 1959 allowed.

Petition 167 of 1958 dismissed.

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