Sikander Jehan Begum and Another

Vs

Andhra Pradesh State Govenrment

Civil Appeal No. 279 of 1960

(CJI B. P. Sinha, P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah JJ)

20.12.1961

JUDGMENT

GAJENDRAGADKAR, J. -

Writ Petition No. 197 of 1956 and Civil Appeal by Special Leave No. 279 of 1960 arise between the same parties and they raise a short question about the validity of section 13, sub-section 2 of the Hyderabad Atiyat Enquiries Act, 1952 (No. X of 1952) (hereinafter called the Act). The decision of this question lies within a narrow compass but the facts leading up to the Civil Appeal and the Writ Petition are somewhat complicated and they must be stated at the outset in order that the background of the dispute may be properly appreciated.

Sikander Jehan Begum and Khurshid Jehan Teleyawar Begum are the petitioners in the Writ Petition and the appellants in the Civil Appeal they are the legitimate sisters of Nawab Kamal Yar Jung who died on January 26, 1944. According to the petition, the said Nawab left behind him three legitimate wives and two legitimate sisters but no legitimate children. He had, however, a number of Khawases (concubines) and three illegitimate sons and an illegitimate daughter. These are respondents Nos. 6-9 in the Writ Petition. The said illegitimate children were the issues of respondent Nos. 10 & 11 who were the concubines of the Nawab. Respondent Nos. 6-11, however, claimed to be the legitimate heirs of the said Nawab because according to them, respondent Nos. 10 & 11 were the legitimate wives of the Nawab. A dispute as to succession to the estate of the said Nawab has given rise to the present controversy.

The said Nawab belonged to a leading family of Nobles in the Hyderabad State and was possessed of large Jagir and non-Jagir properties. Soon after his death, the Nizam appointed a Commission of Enquiry to hold a regular enquiry into the Virasat of the late Nawab Kamal Yar Jung of February 8, 1944. By the Firman issued by the Nizam in that behalf a direction was given that the Government should take the estate of the late Nawab under its supervision so that after the declaration of the successor, arrangements may be made about its delivery to the proper person. It appears that the Government accordingly took possession of the properties of the Nawab and continued in possession thereafter.

On September 17, 1948, Police action commenced and it ended on the 26th September on which date the Military Governor took charge of the administration of the Hyderabad State. On November 9, 1948, the Commission on Enquiry which had been appointed by the Nizam made its report. The report showed the according to the Commission, Husain Khan, Tahawar Husain Khan, Sadiq Husain, Khatija Begum were the legitimate and lawful sons and daughter of the late Nawab, with the result that except for Riyasatunnisa Begum, Lal Bee and Azizunnisa Begum who were the wives

of the late Nawab, none else could be held entitled to succeed to his estate. It appears that the report thus submitted by the Enquiry Commission did not receive the sanction or approval of the Nizam.

Subsequently, on November 22, 1948, the Nizam issued a Firman whereby a new Special Tribunal was constituted according to the opinion of the Military Governor and it was asked to hear the Virasat enquiry of the late Nawab. The Tribunal was given authority to record fresh evidence, if necessary. This Tribunal made its report on April 3, 1949. The majority of this Tribunal took the view that the three widows of the late Nawab were his legitimate wives and ought to get together As.-/2/- share. They also expressed the opinion that Sheerin Bua and Parichehra Bua were the Mutha wives and their sons Syed Mohd., Hussain Khan, Syed Tahawar Hussain Khan and Syed Sadiq Hussain Khan were the legitimate sons of the late Nawab and so they should all together get As.-/12/- share. The remaining As.-/2/- share should go to Khedja Begum who, in the opinion of the majority, was the legitimate daughter of the late Nawab.

It appears that after the Military Governor was put in charge of the administration of the State of Hyderabad, the Nizam issued a Firman on September 19, 1948, delegating to the Military Governor all the authority for the administration of the State. Subsequently, by another Firman he made it clear that the authority delegated to the Military Governor included and shall always be deemed to have included authority to make Regulations. This latter Firman was issued on August 7, 1949. In due course, the Chief Minister took the place of the Military Governor and the Nizam issued a Firman on December 1, 1949, whereby all the powers of administration delegated by him to the Military Governor were as from the date of the notification terminated and the said powers were delegated to the Chief Minister. That is how the Chief Minister was vested with all the powers of administration which the Nizam possessed.

When the Military Governor was in charge of the administration of Hyderabad State, he exercised his delegated powers of legislation and promulgated several Regulations. One of these was the Hyderabad (Abolition of Jagirs) Regulation, 1358 F. This Regulation came into force on August 15, 1949. Broadly stated, the effect of this Regulation was that all Jagir lands were incorporated into State lands as from the appointed day and their administration stood transferred to the Jagir Administrator who was to be appointed by the Government. The Regulation made necessary provisions for making cash payments out of the net income of the Jagirs to the Jagirdar or Hissedars or maintenance holders. This arrangement was intended to serve as an interim arrangement pending the final disposal of the question about the commutation to be paid for the Jagirs. This Regulation was followed a few months later by the Hyderabad Jagirs (Commutation) Regulation, 1359 F which came into force on January 25, 1950. By this Regulation, provision was made for the payment of compensation by way of the commuted value of the Jagir which had to be determined by the Jagir Administrator in accordance with the relevant provisions of the Regulation.

On January 26, 1950, the Constitution came into force and on April 3, 1950, the report submitted by the second Commission was confirmed by the Chief Minister. As a result of this confirmation, the shares of three sons and daughter as well as the three widows of the late Nawab were declared. Each son was recognised to be entitled to As.-/4/- share, the daughter to As.-/2/- share and the three widows between them to As.-/2/- share. It was also declared that Sheereen Bua, Parichehra Bua as the Mamtua wives of the late Nawab were entitled to Guzara (maintenance) only. In substance, it is the order thus passed by the Chief Minister which has given rise to the present litigation between the parties.

The widows of the late Nawab - Ahmedunnisa Begum and Azizunnisa Begum - challenged the

validity of the Government decision recorded in the confirmatory order passed by the Chief Minister by a Writ Petition before the High Court of Judicature at Hyderabad on June 20, 1950. It was urged by them that the impugned decision of the Government was ultra vires and null and void and they claimed a writ of Certiorari quashing the said decision. As a consequential relief, they claimed appropriate orders against the parties who were held entitled to shares in the property of the late Nawab. The Writ Petition was first heard by a Division Bench of the Hyderabad High Court. The Bench found that the petition raised several questions of constitutional importance and so on August 24, 1950, it referred the petition for disposal before a Full Bench. Accordingly, a Full bench consisting of three Learned Judges of the High Court heard it on March 20, 1951. They held that the questions raised were of such a vital importance that it would be appropriate that a larger Full Bench should deal with them. That is how the questions formulated were referred to a larger Full Bench of five learned Judges of the High Court. After these questions were answered by the larger Full Bench, the matter was remitted to a Full Bench of three learned Judges and in accordance with the answers given, the Writ Petition was finally dismissed on June 30, 1952. Meanwhile, on March 14, 1952, the Act had come into force.

The two widows of the late Nawab then applied for and obtained a certificate from the High Court to prefer an appeal to this Court. On December 27, 1955, however, the said widows purported to compromise their dispute with the opponents and expressed a desire not to prosecute the appeal before the Supreme Court any further. When the petitioners Sikander Jehan Begum and Khurshid Jehan Begum came to know about these developments, they immediately sent an application to this Court praying that their names should be transposed as appellants in the appeal pending before this Court, at the instance of the said two widows; in this application, they undertook to deposit the necessary security for costs as well as the printing charges. This application was, however, returned to the petitioners on the ground that it did not lie to this Court as the record had not been formally transmitted to it. Thereupon, the petitioners made a similar application before the High Court and the widows applied for permission to withdraw their appeal, Both the applications came on for hearing before the High Court on August 16, 1955. The High Court rejected the petitioners' application for transposition and allowed the widows' application granting them leave to withdraw their appeal. On August 8, 1955, the petitioners had made in independent application to the High Court for leave to appeal to the Supreme Court against its judgment in the Writ Petition. This application was dismissed by the High Court on March 20, 1956. Petitioners then applied for special leave and special leave was granted to them. That is how Civil Appeal No. 279 of 1960 has come to this Court by special leave. Long before this appeal came here, the petitioners had filed a writ petition No. 197 of 1956. That in brief is the background of the dispute between the parties before us. It is common ground that our decision in the Writ Petition will govern the decision in the Civil Appeal. Indeed, as we have already indicated both the proceedings raise the same point of law.

Before dealing with the said question, however, it is necessary to examine briefly the broad features of the Act. The Act was passed to amend and consolidate the law regarding Atiyat grants in respect of Atiyat enquiries, enquiries as to claims to successions to, or any right, title or interest in Atiyat grants and matters ancillary thereto. As s. 15 of the Act shows, it repealed all previous circulars relating to this matter except as provided by cls. (a) and (b) of the said section. Sections 3 to 7 contain general provisions as to Atiyat grants. Under section 3, all Atiyat grants held immediately before the commencement of the Act shall continue to be held by the holders thereof and by their successors, subject to the conditions therein specified. Section 4 deals with the inquires as to Atiyat grants in Jagirs. Section 5 prescribes the consequences of the breach of conditions of Muntakhab or Vasiqa. By s. 6 alienation of the Atiyat grants are prohibited and exemption from attachment by a Court is granted in respect from them. This latter provision is, however, subject to the proviso that

half the income of the Atiyat grant shall be attachable in execution of a degree through the Revenue Department. Section 7 provides that succession to Atiyat grants shall in future be regulated by the personal law applicable to the last holder. Sections 8 to 11 deal with the constitution of Atiyat Courts their jurisdiction and procedure. Section 8 provides for hierarchy of four categories of Courts on whom powers could be conferred by Government by means of a notification issued under s. 9. Section 10 provides that the jurisdiction and procedure of the Atiyat Courts shall be regulated in the manner specified in the schedule and it adds that the time within which and the manner in which appeals may be filed against the decisions of the said Courts shall be such as may be prescribed. Section 11 deals with appeals. As a result of the provisions of s. 11, the decision of the Board of Revenue shall be final. Then we have a group of five sections dealing with miscellaneous matters. Section 14 confers on the Government the power to make rules, s. 15 is the repealing section, and s. 16 provides that the Act will cease to be applicable to any Inam to which at any time the Hyderabad Enfranchised Inams Act, 1952 is made applicable. That leave ss. 12 and 13 which requires careful consideration.

Section 12 provides that the final decision of a Civil Court on questions of succession, legitimacy divorce or other questions of personal law shall be given effect to by the Atiyat Court on the said decision being brought to its notice by the party concerned or otherwise irrespective of whether the decision of the Atiyat Court was given before or after the decision of the Civil Court. It is thus clear that though the Act has established a hierarchy of Atiyat Courts for dealing with the question about the succession to Atiyat estates, s. 12 provides that the final decision of the Civil Court on matters therein specified binds the parties and has to be given effect to by the Atiyat Courts. Under this section, the final decision of the Civil Court will have to be given effect to even if it was pronounced after an Atiyat Court had decided the matter. That means the earlier decision of the Atiyat Court, if it is inconsistent with the subsequent decision of the Civil Court, will have to yield to the latter and the question of succession shall be governed in the light of Civil Court's decision.

That takes us to s. 13. This section reads as follows :-

> "13. (1) Except as provided in this Act, the decision of an Atiyat Court shall be final and shall not be questioned in any Court of Law.
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> (2) The orders passed in cases relating to Atiyat Grants including Jagirs on after the 18th September, 1948 and before the commencement of this Act by the Military Governor, the Chief Civil Administrator or the Chief Minister of Hyderabad or by the Revenue Minister by virtue of powers given or purporting to be given to him by the Chief Minister shall be deemed to be the final orders validly passed by a competent authority under the law in force at the time when the order was passed and shall not be questioned in any court of law."

It will be noticed that the result of s. 13(2) is to validate the orders of the authorities therein specified which have been passed between September 18, 1948, and March 14, 1952. The first date refers to the commencement of the Police action and the latter to the commencement of the operation of the Act. The object of the Legislature clearly is to validate orders passed between the said two dates so that the questions determined by the relevant orders should not be reopened for enquiry either before the Atiyat Courts or before the Civil Courts. It is not disputed that between the commencement of the police action and the passing of the Act events of historical importance took place in the State of Hyderabad and so treating that period as of unusual significance is not open to any criticism. Therefore, if the Legislature chose to deal with the orders passed during this period as

constituting a class by themselves, that itself cannot be said to contravene Art. 14 of the Constitution.

It is however, urged that the result of the impugned provision is to deny the petitioners their right to have questions of succession adjudicated upon by a Civil Court and that itself constitutes discrimination which contravenes Art. 14. In support of this argument, reliance has been placed on the decision of this Court in Ammeerunnissa Begum v. Mahboob Begum [[1953] S.C.R. 404]. We are not impressed by this argument. In the case of Ammeerunnissa Begum it was obvious that the Legislature had singled out two groups of persons consisting of two ladies and their children out of those who claimed to be related to the deceased Nawab Waliudowla and preventing them from establishing their rights under the personal law which governed the community, in Courts of law. Unconstitutional discrimination was thus writ large on the face of the Act impugned in that case. The position in the present case is very much different. Section 13(2) does not validate the orders passed in the enquiry relating to the present case alone. It purports to validate the orders passed between the two specified dates in respect of all the enquiries which were then pending. That is one important point of distinction. Besides, as we will point out later, the nature of the property in respect of which the petitioners make a claim is fundamentally different from that in the case of Ammeerunnissa Begum. The property in the latter case was heritable property succession to which had to be determined under the principles of the personal law applicable to the parties, while in the present case, the succession to Atiyat property does not come as a matter of right to the heirs of the last holder. Therefore, in our opinion, the argument based upon the decision of the case Ammeerunnissa Begum cannot succeed.

The chellange to the validity of s. 13(2) has taken another from before us. It was argued that during the prescribed period, a large number of cases were pending orders by the authorities concerned. By chance or accident, orders by the relevant authorities were passed in the present case and may have been passed in some others. But there may be other cases of a similar type on which orders may not have been passed by the relevant authorities during the prescribed period and in singling out cases in which orders have been passed the impugned provision has made a classification which is irrational and offends against Art. 14. The accident that orders were passed in some cases and were not passed in some others cannot afford a rational basis for classifying the two sets of cases. During the course of arguments, however, it turned out that no factual basis had been made out in the petition on which this argument could be based. It is not alleged that there are any cases in which orders have not been passed and which would, therefore, fall outside s. 13(2). When this fact was put to the learned Attorney-General who argued for the petitioners, he fairly conceded that in the absence of the relevant material, the argument could not be sustained. Therefore, we do not think it is necessary to examine the merits of this argument, though we may add that, prima facie, classification made between cases decided and those not decided may not be irrational or unreasonable.

The learned Attorney-General then contended that in validating the orders passed by executive authority on the question of succession, s. 13(2) violates Art. 14 because it is the right of every citizen to have questions of succession tried by a Civil Court. He argues that if the petitioners wish to make a claim in regard to the succession to the estate in question, they have a right to enforce their claim in a Court of Law and in so far as the impugned provision denies them that right, that amounts to discrimination against the petitioners which is violative of Art. 14. It would be noticed that this argument is, in substance, similar to the contention raised by the learned Attorney-General on the strength of the decision in the case of Ammeerunnissa Begum. In examining the validity of this argument, it is necessary to consider the nature of the property in respect of which the petitioners seek to make a claim by way of succession.

The legal nature of the jagir estate has been considered by the High Court in dealing with the Writ Petition filed by the widows of the late Nawab. Several Firmans to which reference has been made by the High Court indicate that on the death of the holder of the jagir, the estate devolved upon the State and though it was usually regranted to the person who was found to be the successor on enquiry, in theory, jagirs were resumed on the death of the holder of the jagir and their heirs did not automatically succeed to them. It is also clear that in their lifetime the Jagirdars were not permitted to alienate the property and that it was not necessary that on the death of the Jagirdar the estate should be granted to all his heirs either. It also appears that no suit relating to jagir could be instituted in the Civil Court without the prior special permission of the Nizam. The Firman issued on December 16, 1901, to which the Judgment refers, shows that the heirs of the deceased holders of Jagirs could not insist upon their right to succeed to the estate because no Atiyat grant was heritable. Another Firman issued on September 28, 1928, showed that the powers of the grantor of the Jagir could not be curtailed by the rules framed for the guidance of the Atiyat Courts and that the grantor had an absolute right either to regrant the state to the successor or not. Therefore, the position appears to be that "the jagir tenure consisted of no more than usufructuary rights in land to which the revenue law of the State did not apply; that the Jagirs were inalienable and terminable on the death of the grantee, each Jagirdar, though an heir of the deceased holder, was deemed a fresh grantee of the estate, the right to confer such an estate being uncontrolled, absolute and beyond the jurisdiction of the Civil Courts.

It is true that on the death of a Jagirdar an enquiry was held about the succession to the said Jagir either by the Atiyat Courts or by a commission or Tribunal specially appointed in that behalf; and it is also true that generally the property of the deceased Jagirdar was granted to the person who was held by the Nizam to be the successor of the deceased Jagirdar. But that does not affect the true legal character of the Jagir. This position is borne out by the previous Firmans issued by the Nizam in regard to the enquiry of the Atiyat estates. Circular No. 34 of 1341F prescribed rules for conducting enquiries and passing decisions in cases of Inam. This circular was subsequently superseded and in its place Circular No. 10 of 1338F was issued. The date of this latter circular is June 13, 1929. Several rules are prescribed in the form of sections for holding enquiries and passing decisions in Inam cases. It is not necessary to refer to the sections of this Circular in detail. It may be enough to state that three classes of officer are contemplated by the Circular for holding the enquiry. They are given powers to hold the enquiry. The enquiries are intended to be held generally in accordance with the procedure prescribed in the Civil Procedure Code. Appeals are provided against the decision of one officer to the officer higher in rank, but the ultimate position appears to be clear; when the Nizam-e-Atiyat expresses his opinion and submits it to the Hon'ble the Revenue Member, the Revenue Member thereupon expresses his own opinion, and on considering all the opinion expressed in the enquiry, "the Nizam is graciously pleased to issue his Firman and the Firman thus issued will be binding on the parties." Thus it appears that though formal provisions were made in regard to the holding of the enquiry, the nature of the enquiry was essentially consultative and the Nizam was not bound by the decisions reached by the several officers authorised to hold the enquiry. The fact that the Nizam usually accepted the decision of the enquiry does not alter the legal position that the Nizam might well have refused to accept the opinion and might even have refused to make a grant of the estate to anyone among the several claimants. Therefore, even under the Circulars issued by the Nizam for holding enquiries into the questions of succession to Jagirs, the position appears to be clear that jagirs were not heritable and on the death of the Jagirdar, on principle and in theory, it was always a case of resumption and regrant.

If that be so, any person who claimed to be the successor of the deceased Jagirdar had no right to come be a Civil Court for establishing that claim. In fact, there is no claim to succession at all, the

question of re-grant being always in the absolute discretion of the Nizam. After the Rule of the Nizam came to an end, the only change that occurred was that on the death of the Jagirdar, the property vested in the State and could be regranted to a successor in the discretion of the State. Therefore, in our opinion, the argument that by denying the petitioners the right to establish a claim in the Civil Court, the impugned provision of s. 13(2) offends against Art. 14 of the Constitution, cannot be sustained. The property in respect of which the claim is sought to be made is not like the property in the case of Ameerunnissa at all. In that case, the property was heritable and succession to it was governed by the rules of personal law. In the present case, there is no right to succession as such - whoever gets the estate as a result of the decision of the Chief Minister gets it by way of regrant made by the State. That is why we are satisfied that the challenge to the validity of s. 13(2) on the ground that it contravenes Art. 14 cannot be sustained.

In view of the special character of the property in question, it is obvious that the petitioners cannot challenge the validity of s. 13(2) on the ground that it contravenes Art. 19(1)(f).

There is one more point which needs to be considered and that relates to the non-Atiyat estate left by the estate deceased Nawab Kamal Yar Jung. It appears that the Firman by which the Nizam appointed the first commission of Enquiry refers to the estate of the deceased Nawab in general and is not apparently confined to his Atiyat estate. Similarly, the order passed by the Nizam that the Government should take possession of the deceased Nawab's property appears to have been implemented in regard to both Atiyat and non-Atiyat estates left by the Nawab. The Chief Minister's order confirming the report of the special Tribunal subsequently appointed is likewise vague and may seem to cover both the Atiyat and non-Atiyat estates. The petitioners contend that whatever may be the position in regard to the Atiyat estate, the Chief Minister had no right to make an order in respect of non-Atiyat estate; indeed the Nizam himself could not have appointed an Enquiry Commission in respect of non-Atiyat estate and so the dispute in regard to the succession to the said estate must be left to be decided according to the personal law of the parties and it must be tried by the ordinary Civil Courts. This position is not disputed either by Mr. Viswanatha Sastri who appeared for the State or by Mr. Latifi who appeared for the respondents before us. Incidentally, we may add that it appears that litigation is pending in respect of this property between some of the parties in Civil Suit No. 139 of 1355F. Since it is common ground before us that the non-Atiyat estate is not covered by the order passed by the Chief Minister, all that we wish to do in the present Writ Petition is to make it clear that the said order does not relate to non-Atiyat estate and that questions of title in respect of it will have to be tried in the Civil Courts.

In the result, both the Writ Petition and the Appeal fail and are dismissed with costs. One set of hearing costs.

Petition and Appeal dismissed.

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