Colonel His Highness Sawai Tej Singhji of Alwar

Vs

Union of India and Another

Civil Appeal No. 12(N) of 1969

(A.D. Koshal, N. L. Untwalia, R. S. Sarkaria, JJ)

06.10.1978

JUDGMENT

KOSHAL, J. –

The facts forming the background to this appeal by certificate granted by the High Court of Rajasthan against its judgment dated April 29, 1968, in so far as they are undisputed, may be stated in some detail. On February 28, 1948, the Rulers of the erstwhile States of Alwar, Bharatpur, Dholpur and Karauli entered into a covenant (hereinafter referred to as the Matsya Covenant) agreeing to merge their States into one State know as the United state of Matsya which was to come into being on April 1, 1948 with the ruler of Dholpur as its Raj Pramukh. Article VI of the covenant provided that the ruler of each covenanting State shall, as soon as may be practicable and in any event not later than March 15, 1948, make over the administration of his State to the Raj Pramukh and that thereupon all rights, authority and jurisdiction belonging to such Ruler which appertained or were incidental to the government of his State, shall vest in the United State of Matsya. Article XI of the covenant provided for the private properties of the Ruler and ran thus :

> 1. The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State of the Raj Pramukh.
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> 2. He shall furnish to the raj Pramukh before May 1, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.
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> 3. If any dispute arises as to whether any item of property is the private property of the Ruler or State property it shall be referred to such person as the Government of India may nominate and the decision of that person shall be final and binding on all parties concerned.

2. The United State of Matsya came into being as stipulated in the Matsya Covenant on April 1, 1948 and during the same month the Ruler of Alwar, who is the appellant before us, furnished to the Raj Pramukh an inventory of all the immovable properties, securities and cash balances held and claimed by him as his private properties.

3. On April 11, 1948, the Rulers of ten States, namely Banswara, Bundi, Dungarapur, Jhalawar, Kishengarh, Kotah, Mewar, Partabgarh, Shahpura and Tonk entered into a covenant agreeing to

merge them into one State named the United State of Rajasthan. That covenant was supersede by another dated March 10, 1949 (hereinafter called the Rajasthan Covenant) through which the United State of Rajasthan was to consist of the said ten States as also of four others, namely Bikaner, Jaipur, Jaisalmer and Jodhpur, with the Ruler of Jaipur as the Raj Pramukh. Clause (c) of Article I of the Rajasthan Covenant defined the expression "new Covenanting State" to mean any of the said four States. Article II of the covenant last mentioned provided that the United State of Rajasthan would include any other State, the Ruler of which entered into an agreement with the Raj Pramukh, with the approval of the Government of India, to the integration of that State with the United State of Rajasthan.

4. Article XII of the Rajasthan Covenant provided :

> (1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties), belonging to him on the date of his making over the administration of that State to the Raj Pramukh of the former Rajasthan State or as the case may be, to the Raj Pramukh of the Untied State under this Covenant.
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> (2) If any dispute arises as to whether any item of property is the private property the Ruler of a Covenanting State other than a new Covenanting State or is State property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh, and the decision of that person shall be find and binding on all parties concerned :
>
> Provided that no such dispute shall be so referable after the first day of may, 1949.
>
> (3) The private properties of the Ruler of each new Covenanting State shall be as agreed to between the Government of India in the State Ministry and the Ruler concerned, and the settlement of properties thus made shall be final.

5. On May 1, 1949, the Rulers of the State of Alwar, Bharatpur, Dholpur and Karauli which were the Constituent State of the Untied State of Matsya, entered into an agreement (hereinafter called the Amending Agreement) with the Raj Pramukh of the United State of Rajasthan merging their four State into it with effect from May 15, 1949 in abrogation of the Matsya Covenant. While subscribing to the Amending Agreement the Ruler of Dholpur acted not only in his capacity as such but also as the Raj Pramukh of the United State of Matsya. Article IV of that Agreement effected amendments in the Rajasthan Covenant so as to make it applicable to the said four States with effect from the date last mentioned. No change, however, was made in the provisions of clause (c) of Article I or Article XII of the Rajasthan Covenant.

6. On September 14, 1949, Mr. V. P. Menon of the Ministry of States, Government of India, wrote the following letter to the Ruler of Alwar :

My dear Maharaja Sahib,

Your Highness will recall that the inventory of immovable properties, securities and cash balances furnished by Your Highness in accordance with Article XI of the Covenant for the formation of the United State of Matsya was discussed with Your Highness at New Delhi on April 9 and 10, 1949. I now forward for Your Highness's information a copy of the final inventory of Your Highness' private properties. It has the approval of the Government of Indian in the Ministry of State.

2. The following claims of Your Highness and the counter-claims of the former Matsya Government are still under consideration and the decision will be communicated to Your Highness as soon as possible.

> (1) Cash balance of the Alwar treasury;
>
> (2) claim for Rs. 4,82,520 as arrears of Privy Purse of Your Highness for 6 years from 1936-37 to 1942-43.

3. Your Highness will appreciate that the settlement of the inventory is an integral part of an over-all agreement in respect of all outstanding matters of dispute and does not stand by itself.

With kind regards,

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Your Sincerely

(Sd.) V. P. Menon

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7. This letter was accompanied by a copy of the "final" inventory which listed 32 items. Reproduced below is the item at Serial 1 of that inventory :

> #----------S. Description Decision of the State MinistryNo. of Property----------1 City Palace Ancestral. The portion of the building at including present in use by the State for adjoining administrative purposes or for museum and building. Imperial Bank will continue to be so used till such time as requested. The requirements of the State in future will not be of the same order as today and every effort will be made to release the accommodation at present occupied in the Zenana & Mardana Mahals at the earliest practicable date. The State will bear the Maintenance cost of the portions used by it. Any addition or alteration in the portion used by the State will require the prior consent of His Highness and should be carried out at State expense.----------##

8. Thereafter, correspondence went on between the Ministry of States and the Ruler of Alwar and on September 24, 1952 the latter received from the former a written communication dealing with 26 items of properties. The opening clause of para 2 of the letter Stated :

> 2. The Government of Indian have carefully considered all the outstanding questions in respect of Your Highness's private properties, in consultation with the Rajasthan Government, and their decisions in respect thereof are as follows :-

The description of each item covered by the letter was followed by the decision in respect thereof. That part of the letter which deals with item 26 is set down below :

> (26) City palace including adjoining buildings. - The City Palace with the adjoining buildings, comprising of the Jagir office, Central Record, Imperial Bank, Treasury,

> Gandhi National School etc. will be your Highness' ancestral property. The secretariat building will however be State property.

9. This decision was reiterated in an office memorandum issued by the Government of Rajasthan in the political Department on December 30, 1952.

10. Though a letter dated October 14, 1959 proceeding from his private Secretary and addressed to the Chief Secretary, Ministry of Home Affairs, Government of India, the Ruler of Alwar claimed rent for three properties known as the Secretariat building, Daulat Khana building and Indra Viman Station adjoining the City palace and the bungalow at Sariska, which were in the occupation of the Rajasthan Government. The claim was made on the ground that all the four properties had been declared to be the private properties of the Ruler in the inventory appended to the letter dated September 14, 1949 mentioned above. The claim was rejected by the Ministry of Home Affairs which asserted in its letter dated December 24, 1959 that the four properties in question had not been recognised as the private properties of the Ruler. The claim was reiterated by the ruler through a letter issued by Shri Gopesh Kumar Ojha, his Legal and Financial Adviser, but the same was again turned down by the ministry of Home Affairs through their letter dated December 6/8. 1960 in which the position taken was :

> The Statement regarding the extent of your private Property rights in the City Palace area made in our letter dated December 24, 1959 are based upon the decision reached in March 1952 after discussion with your Highness and we regret that they cannot now be reopened.

11. It was in the above background that the Ruler of Alwar filed two suits being Suits 4 and 5 of 1963, in the Court of the District Judge, Alwar. In Suit 5 the prayer made was that the three properties know as the Secretariat building, Daulat Khana building and Indra Viman Station be declared to be the private properties of the plaintiff and that the State of Rajasthan be ejected therefrom, or, in the alternative, be ordered to pay rent at a specified rate. A decree for Rs. 36,000 was claimed for mesne profits. In Suit 4 of 1963, the claim was that the plaintiff was entitled to rent or mesne profits in respect of a building forming part of the Mardana Palace.

12. Both the suits were resisted by the Union of Indian and the State of Rajasthan who were joined as the two defendants to each of them and it was claimed inter alia that the provisions of Article 363 of the Constitution of India were a complete bar to their maintainability.

13. The two suits were transferred by the High Court of Rajasthan to itself and the question of their maintainability was mooted before it with reference to the provisions of Article 363 of the Constitution which State :

> (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the Commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of Indian or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating

to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article -

(a) "Indian State" means any territory recognised before the commencement of this Constitution by his Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of Indian, as the Ruler of any Indian State.

14. The High Court proceeded to determine whether the dispute in suit 5 of 1963 was one arising out of an agreement such as fell within the ambit of Article 363 (as was contended by the defendants) or was merely a one-sided decision of the Government of Indian and, therefore, outside the purview of the article as was asserted by the plaintiff. It held that the "decisions" contained in the letter dated September 14, 1949 had really resulted from an agreement between the Ministry of State and the plaintiff, that the extent of the building adjoining the City Palace was not to be found with precision in the inventory appended to the said letter, that consequently there was a real dispute between the parties whether the suit property was included in the expression "adjoining building" and that the adjudication of such a dispute was barred by the provision of Article 363 of the Constitution. Suit 5 of 1963 was, therefore, dismissed, but with no order as to costs. In regard to suit 4 of 1963, however, the High Court held that the Property in dispute was clearly a part of the City Palace itself as it was comprised in the Mardana Mahal, that the dispute was altogether illusory in view of the fact that right up to December 8, 1960, the Government of India had been taking the stand that disputed property was the private property of the plaintiff, that the dispute was consequently not barred by the provisions of Article 363 of the Constitution, and that the suit, therefore, deserved to be decided by the District Judge on merits. In the result, suit 4 of 1963 was remitted to the trial Court for decision according to law.

15. It is the judgment of the High Court in suit 5 of 1963 alone that is challenged in this appeal.

16. Mr. B. D. Sharma, learned Counsel for the appellant-Ruler, has vehemently contended that the letter dated December 14, 1949 was not the result of an agreement between the plaintiff and the Government of India and that, on the other hand, it was a decision arrived at in pursuance of clause (3) of Article XI of the Matsya Covenant. In support of this contention it was pointed out that the letter was issued as a sequel to the inventory furnished by the plaintiff under clause (2) of that Article and that the operative part of the inventory appended to the letter is headed "decision of the States Ministry" which, according to learned Counsel, clearly negatives an agreement. It was further urged that even the Rajasthan Covenant did not envisage any agreement in so far as the plaintiff was concerned because he was not the Ruler of a "new Covenanting State" within the meaning of that expression as used in clauses (2) and (3) of Article XII thereof, that it was clause (2) of that Article which governed him and which again provided for a decision being given on disputes relating to properties and that the letter dated September 14, 1949 must still be construed as a decision if the Matsya Covenant was held to be inapplicable. A careful examination of the material on record, however, clearly makes out that the contention is without substance as we shall presently show.

17. It is no doubt true that the plaintiff had furnished the inventory of the properties held by him in

accordance with Article XI of the Matsya Covenant as is stated in the opening paragraph of the letter dated September 14, 1949. It further cannot be gainsaid that the third column of the inventory to that letter was headed "decision of the State Ministry". These two factors, without more might have gone a long way to support the case propounded on behalf of the plaintiff, but they are sought to be used out of context as is clear from a perusal of the entire letter from which it can be safely spelt out that the so-called "decision" was nothing but an agreement arrived at between the Government of Indian and the plaintiff. It is pertinent that the letter mentions that the inventory furnished by the plaintiff was discussed with him at New Delhi on April 9 and 10, 1949 and then states that a copy of the final inventory of the plaintiff's private properties, which had the approval of the Government of Indian in the Ministry of States, was forwarded to him. Now, under clause (3) of Article XI of the Matsya Covenant as also clause (2) of Article XII of the Rajasthan Covenant no approval of the Ministry of State was called for. In fact, what each of those clauses provided was that if any dispute arose as to whether any item of property was the private property of the ruler concerned or of his erstwhile state, it was to be referred to such person as the Government of India might nominate, and the decision of that person was to be final and binding on all parties concerned. Now, it is not the case of the plaintiff that the Government of Indian nominated a person to whom the dispute was to be refereed; not is it claimed by him that such a person gave any decision. The contents of the letter, therefore, are not at all relatable to those of either of the two clauses just above mentioned. On the other hand, they clearly indicate that the so called "decisions" of the States Ministry contained in the inventory appended to the letter formed really the record of the agreement arrived at between the Ministry of States and the plaintiff as a result of negotiations held on April 9 and 10, 1949. In this connection, reference may pointedly be made to paragraph 3 of letter which bears repetition :

> 3. Your Highness will appreciate that the settlement of the inventory is an integral part of an over-all agreement in respect of all outstanding matters of dispute and does not stand by itself.

18. This paragraph talks of "the settlement of the inventory" which was to be an integral part of an "over-all agreement in respect of all outstanding matters of dispute" and was not to stand by itself. In our opinion, the paragraph is a clincher against the plaintiff and indicates without any shadow of doubt that what the letter said was that all the disputes regarding the property of the ruler were to be settled by an over-all agreement, that the contents of the inventory appended to the letter merely recorded the settlement between the plaintiff and the Ministry of States and that even those contents were not be regarded as a final settlement of the matters dealt with therein unless they formed part of an agreement embracing all items of property.

19. It may be noted here that the Matsya Covenant had been abrogated with effect from May 15, 1949 by the Rajasthan Covenant as Modified by the Amending Agreement and there was thus no question of any decision being given after that date under clause (3) of Article XI of the Matsya Covenant and that the only surviving provision under which disputes regarding property owned by the plaintiff could be determined after May 15, 1949, was Article XII of the Rajasthan Covenant. It is true that the expression "new Covenanting State" as defined in clause (c) of Article I of that Covenant meant only any of the four States of Bikaner, Jaipur, Jaisalmer and Jodhpur, that the definition was not amended by any provision of the Amending Agreement, so that the Sate to Alwar could not be regarded as a "new Covenanting State" for the purpose of clause (3) of Article XII of the Rajasthan Covenant and that the clause of that Article in accordance with which disputes relating to property calmed by the ruler of Alwar as his private property were to be determined was clause (2) which provided for their decision by a person nominated by the Government of India in

that behalf. The fact remains, however, that no such person was ever nominated and that the letter dated September 14, 1949, cannot be construed (for reasons already stated by us) as laying down a decision of any such person. What appears to have happened is that instead of following the course indicated in clause (2) last mentioned and having the disputes referred for decision to a person nominated by the Government of India, the parties (the Government of India and the appellant) decided to adopt the method of mutual agreement to settle those disputes-a method which always remained open to them, notwithstanding the Matsya Covenant and the Rajasthan Covenant. Such mutual agreement could, by no stretch of imagination, be regarded as a decision by a person nominated by the Government of India either under clause (3) of Article XI of the Matsya Covenant or clause (2) of Article XII of the Rajasthan Covenant and must be deemed to be nothing more or less than an agreement simpliciter even though it was labelled as a "decision of the States Ministry" in the inventory appended to the letter dated September 14, 1949.

20. Another contention raised by Mr. Sharma was that was that even if the letter dated September 14, 1949 was held to evidence an agreement, it was not hit by the provision of Article 363 of the Constitution inasmuch as it was an agreement resulting from the Rajasthan Covenant which alone, according to him, was the agreement covered by the article. This contention is also without substance. Article 363 of the constitution bars the jurisdiction of all courts in any disputes arising out of any agreement which was entered into or executed before the commencement of the Constitution by any ruler of an Indian State to which the Government of Indian was a party. The operation of the article is not limited to any "Parent" covenant and every agreement whether it is primary or one entered into in pursuance of the provisions of a preceding agreement would fall within the ambit of the article. Thus the fact that the agreement contained in the letter dated September 14, 1949 had resulted from action taken under the provisions of the Rajasthan Covenant, is no answer to the plea raised on behalf of the respondent that Article 363 of the Constitution is a bar to the maintainability of the two suits, although we may add, that the agreement did not flow directly from the Rajasthan Covenant but was entered into by ignoring and departing from the provisions of clause (2) of Article XII thereof.

21. The only other contention put forward by Mr. Sharma was based on the contents of column 3 of Item 1 of the inventory appended to the letter dated September 14, 1949. He drew our attention to the mention in the column of the portions of the adjoining building being occupied by the State for administrative purpose or for Museum and Imperial Bank and also comprising the Zenana and Mardana Mahals. According to him, this meant that the entire building adjoining the City palace was held to be the private property of the plaintiff, which finally vested in the plaintiff as from the date of the letter and of which the plaintiff could not be divested by any subsequent decision of the Ministry of States. In this connection Mr. Sharma urged that the Ministry of States had no power of reviewing a settlement once arrived at and argued that if it was claimed that such a power existed, the determination by a Court of the limited question of the power of review would be barred by the provisions of Article 365 of the Constitution. This contention also is of on avail to him. As held above, the agreement dated September 14, 1949 was not to stand by itself but was to be a part and parcel of an over-all agreement embracing all outstanding matters of dispute. It follows that the terms of the agreement contained in the letter were liable to change till final agreement was reached, and in this view of the matter no finality could be said to attach to those terms until all the dispute became the subject-matter of an agreed settlement. The terms of the inventory attached to the letter were thus merely tentative, the process of settlement being a continuous one till all the disputes were finally resolved. And the ultimate decision of the Ministry of Home Affairs conveyed in its letter of December 24, 1959, not to treat the Secretariat building, Daulat Khana building and Indra Viman Station adjoining the City Place to be the private property of the plaintiff, was based upon a

mutual agreement between the parties which was reached after discussion in March, 1952, as part of an over-all agreement as is evident from the letter of the Ministry of Home Affairs dated December 6/8, 1960.

22. In view of the conclusions arrived at above, we hold that the "decision" sought to be enforced by the High Court was right in dismissing Suit 5 of 1963 as being not maintainable. The appeal, therefore, fails and is dismissed, but with no order as to costs.

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