

State of Gujarat

Vs

Thakor Shri Pravinsinhji Bharatsinhji and Others

Civil Misc. Petition No. 5255 of 1986 In Civil Appeal No. 1885 of 1977

(R. S. Pathaik, R. B. Misra JJ)

15.05.1986

JUDGMENT

PATHAK, J. –

1. The petitioner, Shri Virendrasinhji Chauhan, was at one time the ruler of Chhota-Udepur. The State of Chhota-Udepur contained the jagir of villages Gundi and Kheda, in which a half share belonged to a Jagirdar, Thakor Shri Pravinsinhji Bharatsinhji of Kadwal (hereinafter referred to as "the Thakor"). An agreement dated March 19, 1948 was executed between the Governor General of India and the Raja of Chhota-Udepur. Under that agreement the Raja ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for, and in relation to, the governance of the State and agreed to transfer the administration of the State to the Dominion government on June 10, 1948. In lieu thereof the Raja was entitled to receive a privy purse and was entitled to the full ownership and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of the agreement. He and the members of his family were entitled to all personal privileges enjoyed by them within or outside the territories of the State immediately before August 15, 1947. A letter dated October 1, 1948 from Shri V. P. Menon of the Government of India in the Ministry of States elaborated on the terms of the agreement and also declared :

(5) Pensions, gratuities, annuities, and allowances granted by the State to the members of its public services who have retired or have proceeded on leave preparatory to retirement before April 1, 1948, as also the enjoyment of the ownership of Khangi villages, lands, jagirs, grants, etc. existing on April 1, 1948 are hereby guaranteed. This guarantee is without prejudice to the right of Government of Bombay to issue any legislation which does not discriminate against the States and their subjects.

As has been mentioned, the Thakor was the owner of a half share of the jagir of villages Gundi and Kheda. Under the provisions of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, he became entitled to compensation for the trees standing on the lands of the jagir. He filed an application for compensation. By an award dated May 27, 1969, the Jagir Abolition Officer, Baroda held him entitled to compensation in respect of unreserved trees only and declared that no compensation was payable in respect of reserved trees in the jagir. He fixed the value of unreserved trees at Rs 2620 and observed that while half of the compensation was payable to the claimant the other half would go to the former ruler of Chhota-Udepur. The Thakor appealed to the Gujarat Revenue Tribunal, and the Tribunal, by its order dated June 9, 1961, remanded the case to the Jagir Abolition Officer for a fresh determination of the valuation of unreserved trees, while observing at

the same time that he was not entitled to compensation for reserved trees. The Thakor filed a writ petition in the High Court, and on December 16, 1963 the High Court held that he was entitled to compensation in respect of reserved trees also. By his order dated September 2, 1967, the Jagir Abolition Officer awarded Rs 18,258 as compensation for all the trees, reserved as well as unreserved, standing on the Gundi and Kheda jagir and directed that out of that amount a sum of Rs 9129 was to be paid to the Thakor. Dissatisfied with the award, the Thakor filed an appeal. On March 29, 1968, the Gujarat Revenue Tribunal remanded the case to the Prant Officer with the direction that he should determine the valuation of the trees on the basis of the evidence on record. The Prant Officer, Chhota-Udepur made his award on August 7, 1971 and held that the valuation of all the trees was Rs 10,134.96 only, of which the Thakor would be entitled to Rs 5067.48. The Thakor again appealed to the Gujarat Revenue Tribunal and the Tribunal found that the total value of all the trees was Rs 68,039 of which half was payable to the Thakor. The Thakor then filed a writ petition in the Bombay High Court, and on July 23, 1975 the High Court held that the total market value of the trees was Rs 1,70,540 and the Thakor would be entitled to the half share of Rs 85,270 with interest at 3 per cent per annum or that amount from August 1, 1954.

2. The State of Gujarat obtained special leave to appeal against the order of the High Court. This gave rise to Civil Appeal 1885 of 1977. During the pendency of the appeal an application was made by the petitioner, Shri Virendrasinhji Chauhan, praying for permission to be impleaded as a respondent in the appeal. The application was allowed on August 18, 1977 and the petitioner was added in the array of respondents. In this behalf the record of the case states :

Upon hearing the office report and hearing course for the parties, the court allowed the application of Maharaja Virendrasinhji N. Chauhan for being impleaded as a party respondent in this matter and also directs that non-filing of the application in the High Court for a certificate to appeal to this Court is ignored and condoned. The court granted special leave limited to the question of solatium and interest and dictated an oral order dated August 18, 1977 disposing of the appeal with no order as to costs.

The appeal was disposed of by an order of that date which reads :

In view of the decision of this Court in State of Gujarat v. Gujarat Revenue Tribunal the award for solatium is knocked down and interest will also be awarded in the light of that judgment. Parties were agreed to this situation in this Court. The appeal is disposed of accordingly. There will be no order as to costs.

3. The petitioner applied to the State of Gujarat and the Collector of Baroda claiming that he was entitled to a half share in the total amount of compensation, but apparently met with no success. Accordingly, he applied to this Court for initiating proceedings for contempt of court against the State and the Collector. Meanwhile, the State had filed an application for the amendment of the order of this Court permitting the petitioner to be impleaded as a respondent in the appeal. Both applications were disposed of by an order dated April 4, 1978, which reads :

We do not think that this is a case where a contempt proceeding can be started on the allegation made in the petition. The petitioner may follow such right as may be available to him in law for enforcement of the award, decree or order if there be any in this favour.

Mr S. T. Desai appearing for the State stated that he is withdrawing his petition which is filed for amendment to the order of this Court in CMP Nos. 6560 to 6571 of 1977.

4. The petitioner persisted with the State authorities for payment to him of a half share in the compensation, but having failed to obtain payment he has filed the present petition claiming that a sum of Rs 4,80,487.10 was payable to him on account of a half share in the compensation with interest thereon.

5. The application is opposed by the State of Gujarat and the Collector of Baroda. It is disputed that the petitioner is entitled to any compensation under the order dated August 18, 1977 of this Court disposing of the appeal. It is contended that the mere fact of being impleaded as a respondent in this Court does not entitle the petitioner to any part of the compensation awarded by the High Court, which was concerned solely with adjudicating a dispute between the Thakor and the State. It is pointed out that the petitioner had never made an application for compensation on the abolition of the jagir, and was not a party to the proceedings before the Jagir Abolition Officer and the Gujarat Revenue Tribunal. The adjudication by those authorities determined that a half share belonged to the Thakor and there was no adjudication that the other half share belonged to the petitioner. On the contrary, it is asserted, the half share belonged to the erstwhile State of Chhota-Udepur and on its merger with the then State of Bombay that half share belonged to the State of Bombay. On the reorganisation of the States in 1960, when the State of Gujarat came into existence, the half share passed into the ownership of the State of Gujarat. Upon the abolition of jagirs on August 1, 1954 by the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, the Jagir of Gundi and Kheda was abolished and it now stood vested in the State of Gujarat. It is pointed out further that the inventory of the private properties of the ruler prepared under the Instrument of Merger made no reference to the jagir of Gundi and Kheda. It is also stated that the application for modification of the order dated August 18, 1977 impleading the petitioner was not pressed by the State Only because the petitioner had withdrawn the application for contempt and, therefore, there was no point in pursuing it.

6. The question is whether the right of the petitioner to a half share of the compensation stands determined by the order dated May 4, 1978 of this Court disposing of the appeal. The appeal was directed against the order dated July 23, 1975 of the High Court. That order was made on a writ petition filed by the Thakor against the State of Gujarat. The petitioner was not a party to the writ petition. The writ petition had arise in proceedings taken in respect of the Thakor's half share in the jagir and the determination of the compensation. We have persuaded the order of the High Court disposing of the writ petition and we do not find any adjudication on any claim of the petitioner. The entire controversy before the High Court was a controversy between the Thakor and the State. It is true that when the valuation of the Thakor's half share was determined by the High Court in the writ petition, the valuation of the other half share stood automatically determined. But there is nothing in the order of the High Court determining the ownership of that other half share. There is nothing at all to indicate that the other half share belongs to the petitioner. As we have seen, the petitioner applied for being impleaded as a respondent in the special leave petition, but the order impleading him did not amount to an adjudication on the question whether he was the owner of the other half share in the compensation. It was a special leave petition filed by the State of Gujarat against an order of the High Court passed on the dispute between the State and the Thakor. The presence of the petitioner in the array of respondents could not vest any right in the petitioner to any part of the compensation. If the appeal was allowed in terms of the relief sought by the State, it would have resulted in a reduction of the quantum of compensation awarded to the Thakor. If it had been dismissed, the quantum of compensation determined by the High Court would have stood

affirmed. There was no scope anywhere in the appeal for determining whether the petitioner could claim a part of the compensation.

7. Upon that ground alone this petition must fail.

8. If it was permissible to go into the merits of the claim of the petitioner, it would be necessary to consider whether any part of the jagir of Gundi and Kheda belonged to the petitioner before the Instrument of Merger and, if it did, whether under the Instrument of Merger it was included in the list of private properties of the ruler or was retained by him under any other provision of the Instrument of Merger or of law. We find it unnecessary to express any opinion on this point because, as has been seen earlier, the petitioner has based his claim on the order of this Court disposing of the appeal, and that order cannot be said to confer any rights on the petitioner in respect of the compensation payable on the abolition of the jagir. It will be for the petitioner to establish his title to a half share of the compensation in some other proceeding.

9. The petition fails and is dismissed with costs.

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