Maharaj Dhiraj Himmatsinghji and Others

Vs

State of Rajasthan and Another Civil Appeals Nos. 2290(N) of 1970 and 97 to 99 of 1972

(V. Khalid, M. P. Thakkar JJ)

12.11.1986

JUDGMENT

THAKKAR, J. -

Whether the High Court was justified in reversing the judgment and decree passed by the trial court in favour of the four sons of the Sovereign Ruler of the then State of Jodhpur in the context of an order (Order No. CB/7114 dated September 13, 1946 (Ex. 1)) passed by the said Ruler, and in dismissing the suits instituted by them against the State of Rajasthan for the recovery of various amounts under the said order, is the problem in these appeals (By certificate grated under Article 133(1)(a) of the Constitution of India.)) by the unsuccessful plaintiffs. That order issued by the Ruler inter alia provided that an annual sum of Rs. 30,000 be paid to each of his aforesaid sons (described as Maharajkumars) by way of an annual allowance with retrospective effect from the date of their birth till the date of their attaining majority.

2. On September 13, 1946, some two-and-a-half years prior to the merger of the then State of Jodhpur with the United State of Rajasthan, (which event occurred on April 7, 1949), the then Ruler of the said State passed order Ex. 1 which is the foundation of the suits giving rise to the present group of appeals.

3. The said order insofar as material reads as under :

> His Highness the Maharaja Sahib Bahadur has been pleased to order that with a view to making suitable provision for the maintenance of younger Maharajkumar and Shri Baiji Lal Sahiba :
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> (iii) An annual allowance of Rs. 30,000 per annum each be granted to all younger Maharajkumars from the dates of their birth for the period of their minority.

4. The amounts claimed by each of the four sons in the suits instituted by them in 1955 was in respect of the claim for annual allowance by way of grant at Rs. 30,000 per annum computed retrospectively from the dates of their birth till the date of the passing of the order, that is to say, till September 13, 1946. The particulars relating to the claim may be stabularized as under :

> #----------Appeal No. Name of the Date of Birth Period for which Allow- Amountbefore the Appellant ance is claimed claimedSupreme Rs.Court----------C.A. 97(N) Devisinghji 20-9-1933 20-9-1933of 1972 to 2,34,550 13-9-1946 (13 years & 7 days).C.A. 98(N) Dalipsinghji 20-10-1937 20-10-1937of 1972 to 1,61,050 13-9-1946 (8 years, 11 months & 11 days).C.A. 99(N) Harisinghji 21-9-1929 21-9-

1929of 1972 to 3,06,500 13-9-1946 (17 years & 10 days).C.A. 2290(N) Himmatsinghji 21-6-1925 21-6-1925of 1970 to 4,42,000 13-9-1946 (17 years & 10 days).----------##

5. The following facts have been established :

(1) Jodhpur was a sovereign State till April 6, 1949.

(2) The said Jodhpur State merged with the other Sovereign States to form the United State of Rajasthan on April 7, 1949.

(3) On April 7, 1949, an ordinance was promulgated which provided for the continuance of the laws of the covenanting States (which included Jodhpur State) in the United State of Rajasthan by virtue of Section 3 which provided inter alia, that all laws in force in the aforesaid covenanting States immediately before the commencement of the Ordinance shall continue to be in force.

(4) On April 7, 1949, administrators were appointed in respect of different States which had merged in the State of Rajasthan.

6. The High Court allowed the appeals preferred by the State and dismissed the suits instituted by the sons of the late Ruler of Jodhpur on the following reasoning :

(1) The order (Ex. 1), on the basis of which the claim of the plaintiffs was founded was not passed by the then Ruler in his capacity as the Head of the State in the discharge of any legal liability or obligation subsisting in favour of his four sons. It was an ex-gratia payment ordered to be made by him in his personal capacity as the father of the four plaintiffs and not in his capacity as the Sovereign Ruler of the State inasmuch as the order for payment was not supported by any law or custom having the force of law in the then State of Jodhpur.

(2) The cash allowance ordered to be paid to the four plaintiffs as per order (Ex. 1) retrospectively for the past period preceding the date of making of the order was in substance a gift by the ruler in his personal capacity to his children and not an enforceable obligation incurred by the Sovereign Ruler vis-a-vis plaintiffs.

(3) On the aforesaid premises the amount which had not yet been recovered in respect of the past period could not be recovered from the State of Rajasthan as there was no legal and enforceable obligation against the said State.

7. It was contended before the High Court that on taking into account the true nature of the order (Ex. 1) it was a law within the meaning of Section 3(ii) of Ordinance No. 1 of 1949 (In this section "Law" means "any Act, Ordinance, regulation, regulation, rule, order, or bye-law which, having been made by a competent legislature or other competent authority in a Covenanting State, has the force of law in that State".); the order had all the characteristics of law that is to say, of a binding rule of conduct "of the will of the Sovereign". Since this was a law in the Sovereign State of Jodhpur, its operation continued on the formation initially of the United State of Rajasthan and subsequently of the State of Rajasthan. The High Court negatived this contention relying on the law enunciated by this Court in a catena of decision (State of Gujarat v. Vora Fiddali, AIR 1964 SC 1043 : (1964) 6 SCR 461)-(State of M.P. v. Lal Rampal Singh, AIR 1966 SC 820 : (1966) 2 SCR

53). The view taken in the aforesaid decisions in substance was that every order passed by a Sovereign Ruler was not 'law' inasmuch as it was not necessarily an order passed in the discharge of its legislative function. The Ruler of the Sovereign State, when he passes an order, may be acting in any one of the three spheres namely, legislative sphere, executive sphere or the judicial sphere, though all the three capacities were combined in him. All the same, only that order would constitute 'law', which was passed in exercise of the powers of the Sovereign in the legislative sphere, and none other. An order passed by the Sovereign in his executive capacity, if it is not the result of a legislative process, cannot be characterized as a 'law'. If the result of the order was no more than to bring about a contract, or a grant or a gift, it would not constitute 'law'. The High Court was right in taking the view that having regard to the language of the order itself, it appeared to be an executive order conferring a grant (or a gift) on the plaintiffs. It did not have the characteristics of a legislative measure and did not constitute a law inasmuch as it failed to pass the earlier mentioned tests evolved by this Court in the matter of State of Gujarat v. Vora Fiddali and Rajkumar Narsingh Pratap Singh Deo v. State of Orissa (Rajkumar Narsingh Pratap Singh Deo. v. State of Orissa, AIR 1964 SC 1793 : (1964) 7 SCR 112).

8. It appears to us that in fact the then Ruler of Jodhpur was making a gift in favour of the appellants. It is evident from the fact that the amount ordered to be paid (As per order Ex. 1, dated September 13, 1946) at the rate of Rs. 30,000 per annum is in respect of the preceding years. The four sons had, admittedly, already been maintained and brought up with due dignity and decorum (As disclosed by the Budget Estimate of the State of Jodhpur recorded at Ex. A-10 to Ex. A-12), prior to the passing of the order in question. Since they had already been maintained in a manner and style befitting their status and dignity, at the expense of the State, there was no question of granting any allowance in respect of the (past) period during which they had already been maintained. There is therefore no escape from the conclusion that it was by way of a gift, albeit, without saying so in so many words. The fact that the expression 'gift' has not been employed did not detract from this obvious conclusion. It was an amount ordered to be paid by the Ruler to his sons. It was clearly a gift, inasmuch as it is not shown that till the date of the order any obligation had been incurred by the grantor in favour of the grantees either under any law or under any custom. It has of course been argued on behalf of the appellants that under the 'custom' of the State, the Ruler was bound to maintain his sons. To say that the Ruler was bound to maintain the appellants is not to say that the Ruler was obliged to make a gift in respect of the past period during which the appellants had 'already' been maintained. It is not the case of the appellants, and there is no evidence to that effect, that there was a custom of making any cash allowance every year besides being maintained with due dignity and decorum at the cost of the State exchequer. No such allowance was shown to have been made in the past. What, it may be wondered, was the occasion for making a retrospective allowance for a period ranging from 8 years to 17 years by the order (Ex. 1) at a point of time, just two-and-a-half years before the merger ? In fact the circumstances might well give rise to an inference that it was a 'gift' being made in anticipation of the forthcoming merger. Be that as it may, at best it is a gift which has nothing to do with any customary obligation of the Ruler to maintain the sons, which obligation was already fulfilled by the Ruler in bringing up the appellants with due dignity and decorum at the cost of the State for all the past years till the passing of the said order. A communication (Ex. A-6) addressed by the Chief Minister of the then State of Jodhpur to the Finance Minister prior to the passing of the aforesaid order (Ex. 1) supports and strengthens the conclusion that the allowance which was ordered to be paid had nothing to do with the past maintenance as will be evident from the following extract therefrom :

> His Highness has expressed a wish that his two sons Maharaj Kumars Himmatsinghji and Harisinghji should now be placed on an allowance to be granted by the State as a

> preliminary to their being given Jagirs later on. His Highness' idea is that if they receive an allowance and it is carefully husbanded they should accumulate some surplus to help them when they become Jagirdars. His Highness considers that an allowance of Rs. 5000 per mensem in each case is the correct figure.

We are therefore satisfied that the High Court was right in taking the view that the order for paying annual allowance at Rs. 30,000 for the past years was not made in the discharge of any legal liability or obligation of the Ruler under any law or custom having the force of law. It was merely an ex-gratia payment in the nature of a gift which could not be enforced against the State. The relevant part of the order cannot be construed as a 'law' obtaining in the then State of Jodhpur. And accordingly it cannot be held that the said order continued to prevail as a 'law' in the State of Rajasthan under the 1949 ordinance or any other law. The order cannot therefore be enforced against the State of Rajasthan treating it as a 'law' creating a legally enforceable obligation.

9. It was contended that the purpose of granting maintenance allowance in cash to meet the expenditure from the civil list was to enable the junior members of the Ruler's family to accumulate some surplus to help them when they become Jagirdars in due course on attaining majority. It was argued that if the allowance had been granted earlier, the allowance could have been accumulated by the beneficiaries and since it was not granted earlier, it was granted with retrospective effect. We cannot accede to this submission. Insofar as it relates to the period anterior to the passing of the order (stretching from 8 to 21 years) it cannot be said to be an order passed in connection with the maintenance of the junior members of the Ruler's family for they had already been maintained at the expense of the State exchequer as revealed by the evidence, including the budget estimates (Ex. A-11).

10. Another argument addressed by counsel for the appellants was that the annual allowance ordered to be paid to the junior members of the family of the Ruler has the same legal status as a 'Jagir', and that the order granting such an allowance would have the force of law. The submission is sought to be buttressed by two decisions of this Court. In the first instance support is sought from Thakur Amar Singhji v. State of Rajasthan ((1955) 2 SCR 303 : AIR 1955 SC 504). This Court was concerned with the constitutional validity of Rajasthan Land Reforms and Resumption of Jagirs Act in Thakur Amar Singhji case ((1955) 2 SCR 303 : AIR 1955 SC 504). In the course of the discussion, the court had an occasion to consider the import of the expression 'Jagir'. What emerges from the discussion is that the term 'Jagir' originally connoted grants made by Rajput Rulers to their clansmen in lieu of services rendered or to be rendered. With passage of time, the term 'Jagir' came to the applied to grants made for religious and charitable purposes and even to non-Rajputs. The court has then proceeded to make it clear that both in its popular sense and in legislative practice the word 'Jagir' has come to be used as connoting all grants which conferred on the grantees rights in respect of land revenue. And it was in this sense that the term 'Jagir' was construed under Article 31-A of the Constitution of India. What is of significance is that Jagir has been associated with the grant in respect of land revenue. Accordingly the court proceeded to observe that considering the word Jagir in that sense it must be held that a Jagir was meant to cover all grants in which the grantees had only rights in respect of land revenue and were not tillers of the soil. The expression 'Jagir' would also be applicable to maintenance grants in favour of persons who were not cultivators such as the members of the ruling family. However, the grant has been construed in relation to rights in respect of land revenue recoverable from the actual tillers by intermediaries known as Jagirdars. Testing the grant said to have been made under the order in question by the Ruler of Jodhpur in favour of the appellants, it is futile to contend that it is a grant of a 'Jagir' in this sense for no question of alienation of land revenue in favour of the appellants is involved. All that the Ruler has

done is to order that a particular amount of money be paid in respect of a specified period anterior to the date of the order at the specified rate. There is nothing in Thakur Amar Singhji ((1955) 2 SCR 303 : AIR 1955 SC 504) case which could come to the rescue of the appellants in support of the contention that the allowance in question would constitute a 'Jagir'. It was argued as a matter of logical corollary that since it was a Jagir, the order conferring the Jagir could be construed as a 'law' even if it was not a legislative measure promulgated by the Ruler. Since the first premise that the allowance constitutes 'Jagir' is found to be lacking in substance the submission urged as a corollary of this premise must also fall to the ground as a matter of logical necessity.

11. Reliance was also placed on Madhaorao Phalke v. State of M.B. ((1961) 1 SCR 957 : AIR 1961 SC 298) in support of the contention that the grant made in favour of the appellants would constitute 'law' and that the State of Rajasthan would therefore be under a legal obligation to make payment of the annual allowance to the appellants as provided in the order. The submission, in our opinion, is not well founded. Madhaorao case ((1961) 1 SCR 957 : AIR 1961 SC 298) is not an authority for the proposition that any order passed by the Sovereign directing payment of an allowance would constitute law of the State concerned which would have the force of 'law' in the covenanting States by virtue of the provision made for continuing the existing laws in the covenanting States. The question which had arisen before this Court in Madhaorao case ((1961) 1 SCR 957 : AIR 1961 SC 298) was as regards the 'Kalambandis' issued by the then Ruler of Gwalior conferring a right to receive Rs. 21 and annas 8 per month in favour of an Ekkan. It may be mentioned that the Ekkans were a class of horsemen who formed part of the Peshwa's cavalry. They were foreigners and they brought with them their own horses and accountrements. After making an allowance for the fact that they would have to pay for the maintenance of the horses, a provision for payment of Rs. 21 and annas 8 per month was made, by way of 'bachat'. Whether the right to receive this amount was a statutory right, in other words, whether the Kalambandis on which the rights were founded, constituted rules and regulations having the force of law was the problem posed before the court in Madhaorao case ((1961) 1 SCR 957 : AIR 1961 SC 298). The court considered the nature of the provisions contained in the documents and came to the conclusion that the documents unambiguously bore the imprint of the character of a statute or regulation having the force of a statute inasmuch as it recognised and conferred :

> (i) hereditary rights;
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> (ii) it provided for the adoption of a son by a widow of the deceased holder;
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> (iii) it provided for the maintenance of widows out of the funds specially set apart for that purpose;
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> (iv) it provided for the offering of a substitute when the holder became old or otherwise became unfit to render services; and
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> (v) it also provided for protection in respect of the execution of decree against the amount payable under the Kalambandi.

Having taken into account all these features of the grant, the court proceeded to observe :

In our opinion, having regard to the contents of the two orders and the character of the provisions made by them in such a detailed manner it is difficult to distinguish them from statutes or laws; in any event they must be treated as rules or regulations having the force of law.

Far from supporting the claim of the appellants, the decision in Madhaorao case ((1961) 1 SCR 957 : AIR 1961 SC 298) highlights the fact that the order in question providing for payment of annual allowance for the past years during which the appellants had already been maintained by the State exchequer lacks in the essential ingredients which would justify characterising the order as a rule or a regulation. To put it somewhat crudely, divesting of refinement, the order merely directs payment of a specified sum to the appellants which payment has no nexus with any services rendered by them or any customary right enjoyed by them by virtue of their status as junior members of the family, but merely by reason of the fact that the appellants were the sons of the Ruler on whom the Ruler intended to confer cash benefit. In our opinion, what has been granted under the aforesaid order is nothing but an ex-gratia payment or a gift.

12. Lastly it was contended that the junior members of the family of the Ruler were entitled to a maintenance allowance during their minority as per the custom in the State and that they were entitled to grant of Jagirs upon their attaining majority as per the same custom. The allowance made to the junior members during their minority was treated under a separate head of the State Budget. On these premises it was argued that the order in question must of necessity be construed as legislative in character. We are not impressed by this submission. The allowance made under the order had no nexus with any right to a Jagir. All the appellants were minors at the relevant point of time and they had not even become entitled to Jagirs. As discussed earlier the expression 'Jagir' is apposite only in the context of alienation of land revenue recoverable from the tillers. What was granted by the Ruler to the appellants had nothing to do with a Jagir. Even according to the custom pleaded by the appellants the question of granting a Jagir would have arisen only after they had attained majority. The payment which was directed to be made to them was not referable either to a Jagir or to any other customary right. It was merely a direction to pay a particular amount computed on a particular basis referable to a past period commencing from the date of their birth. We are therefore fully convinced, and firmly of the view, that in substance the amount directed to be paid as per order Ex. 1 was nothing else but a 'gift' by the then Ruler to his sons, unrelated to any legal rights of the appellants. And that it did not create any legal obligation enforceable against the State of Rajasthan inasmuch as the order in question was not a 'law'. There is thus no substance in any of the submissions urged on behalf of the appellants. The view taken by the High Court is unexceptionable and the appeals are devoid of merit. We accordingly dismiss the appeals. There will be no order as to costs.

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