SAURASHTRA HIGH COURT

State of Saurashtra

Vs

Memon Haji Ismail Haji Valimamad

First Appeal No. 16 of 1952

(Shah, C.J. and Baxi, J.)

19.02.1953

JUDGMENT

Baxi, J.

1. The State has preferred this appeal against the judgment and decree of the Civil Judge, Senior Division, in Civil Suit No.470 of 1950 declaring that the order of the Junagadh State Administrator resuming the suit property from the possession of the plaintiff was illegal and against principles of natural justice and that the Administrator had no right to resume the property from the plaintiff's possession. The suit was originally filed in the High Court of Judicature of the Junagadh State and after the integration of the administration of that State with that of the State of Saurashtra, it was transferred to the Civil Judge's Court for disposal.

2. The facts leading to this appeal may be briefly stated as follows: One Ismail Khokhar Kasam Khokhar of Junagadh purchased an open plot of land in the Junagadh City from the Junagadh State and a Ruka or Sanad Ex.34 was issued to him by the Junagadh State. Khokher built superstructures on this land and this land with its superstructure is the subject matter of the order of resumption and has been referred to as the suit property in this judgment. Khokher sold the suit property to the Nawab of Junagadh in about the year 1941, who gave it in gift to defendant 2 under his Private Secretary Office No.P 58 dated 17-11-41. A ruka or Sanad, Ex.31, was issued to defendant 2 by the State on the strength of this gift. This ruka is No.32/98, dated 18-5-1942 and authorises defendant 2 "to use the property" (x x x). Defendant 2 in his turn sold the suit property to the plaintiff for Rs.30,000/- under a registered sale deed dated 24-11-1943, Ex.30 The plaintiff paid Rs.30,000/- to defendant 2's agent by a cheque and the rukas Exs.34 and 31, were handed over to him and possession of the suit property was also delivered to him. The plaintiff is in possession of the suit property from the date of the sale.

3. After the passing of the Indian Independence Act, 1947, there was a complete breakdown of

the administration of the Junagadh State resulting in chaotic conditions and the Regional Commissioner, Western India and Gujarat States Region assumed charge of the administration of the Junagadh State under the orders of the Government of India at the request of the Junagadh State Council supported by the people of the Junagadh State. A proclamation to this effect dated 9-11-1947 was issued by him from Junagadh and has been republished for general information in the Western India and Gujarat States Regional Gazette dated 20-11-1947. The Regional Commissioner appointed an Administrator of the State with full authority to pass all orders and to take all action necessary to carry on the affairs of the Junagadh State under the Regional Commissioner's general guidance and supervision. Subsequently on 14-11-1947, Mr. Shiwashwarkar the Administrator, whose order is called in question in this suit was appointed Administrator by the Regional Commissioner with the same powers and subject to the same limitations on which the first Administrator was appointed -Mr. Shiwashwarker who will hereafter be referred to as the Administrator held that defendant 2 to whom the suit property was given as a gift by way of Inam by the Nawab had no right to sell it under the Ruka Ex.31. He described the grant of the Inam as a wanton and unauthorised gift of public property and cancelled the same. He also held that the plaintiff did not get any right, title or interest in suit property higher than that possessed by his vendor and ordered that the property should be resumed forthwith by the State as State property. Thereupon the plaintiff gave a notice to the Revenue Commissioner as required by Section 423, Junagadh State Civil Procedure Code and filed the present suit in the High Court of Judicature of Junagadh State. The plaintiff claimed, against the Junagadh State, a declaration that the order of resumption was illegal and ultra vires of the Administrator and was not binding on him. He contended further that the Administrator's order was against the principles of natural justice because before making the order the Administrator did not give an opportunity of being heard against it. The plaintiff impleaded his vendor as defendant 2 in the suit and claimed against him in the alternative Rs.30541-2-0 representing the consideration of Rs.30,000/-plus the stamp duty and other expenses incurred by him. Thereafter, on the integration of the Administration of the Junagadh State with that of the Saurashtra State, the suit was transferred to the Court of the Civil Judge, Senior Division, Junagadh and the Saurashtra State was substituted as defendant 1 in place of the Junagadh State. It appears that the estate of the defendant 2 was taken under management by the Saurashtra Government under the Gharkhed Ordinance and therefore the Manager of the Estate was impleaded as deft.3. The learned Civil Judge dismissed the Defendant2 and 3 from the suit on the ground that the cognizance of the suit against them was barred u/ss.37 and 76 of the Gharkhed Ordinance. But against the Saurashtra State he passed a decree declaring that the Administrator's order was illegal and not binding on the plaintiff. The Saurashtra State has preferred this appeal against this decree.

4. Several defenses were raised in the trial Court on behalf of the State. It was contended that the act of resumption by the Administrator was an Act of State and therefore the Court had no jurisdiction to entertain the suit. It was also contended that the Court's jurisdiction was barred by the provisions of Section 4 of Ordinance 72 of 1949. It was contended that the Nawab could not

make a gift of the Suit property to defendant 2 so as to confer upon him a saleable title and in any event the gift could be revoked or resumed by the Nawab or his successor Government at any time. The plaintiff's allegation that the principles of natural justice were not observed by the Administrator before making his order was also not admitted. All these objections were overruled by the learned Civil Judge, who further held that the grant was in the nature of a gift under the Mahomedan Law and could not be revoked.

5. The Advocate General who appeared before us on behalf of the appellant State urged the following points against the learned Civil Judge's decree. He submitted that the Court had no jurisdiction to question the legality of the Administrator's order because the Nawab could not have been sued in his own Court nor could his act of resumption be called into question in any Court, and consequently the Administrator, who stepped in the shoes of the Nawab, could not be sued. He further submitted that the Administrator was acting on bahalf of the Central Government in the exercise of its extra provincial jurisdiction and his order was an act of State and therefore it could not be called into question in a Civil Court. He submitted that Section 5, Extra Provincial Jurisdiction Act, 1947, legalized the Administrator's order and its validity could not be questioned on that ground also. He also submitted that the jurisdiction of the Court was barred under provisions of Section 4 of the Saurashtra Ordinance 72 of 1949. The plaintiff had affixed a court-fee stamp of Rs.10/- on the plaint in respect of, the relief of declaration against defendant 1 State but had not paid ad valorem court-fee on the alternative relief claimed against defendant 2 and an objection against the sufficiency of the court-fee was taken in the lower Court but was overruled. The learned Advocate General submitted that this order was wrong and the plaintiff should now be ordered to pay ad valorem court-fee on Rs.30541-2-0 in the lower Court.

6. Before the formation of the Saurashtra State Kathiawar was made up of numerous States with varying degrees of internal autonomy subject to the paramountcy of the British Crown. Some States were, by reason of the extent of their territory and resources, given complete internal autonomy, while some States were allowed to exercise limited jurisdiction and in matters falling outside their jurisdiction, the Viceroy and later the Crown Representative exercised what was called the residuary jurisdiction on behalf of the respective States. A political Agency was established in Kathiawar for the purpose and this Agency was successively known as the Kathiawar Political Agency, the Western India States Agency and the Western India and Gujarat States Agency. In addition to these States with full and limited jurisdiction, there were numerous Talukas which had neither the means nor the resources to maintain even a semblance of administrative machinery and in the case of such Talukas, which were called non-jurisdictional Talukas, the Agency exercised full jurisdiction on their behalf and the areas over which such jurisdiction was exercised were called the administered areas. The question of alienation of State lands by the Rulers of these States and Talukas had been engaging the attention of the British Government for a very long time and it was considered necessary in the interest of Imnerial policy and the good Government in the States themselves that their territories should not be allowed to be frittered away by alienations and the paramount power always looked askance at

such alienations. The subject has been discussed at great length by Col. Webb in Chap.8 of his compilation called Webb's Political Practice and I owe much of what I have stated on this subject in this judgment to that learned author. Alienations by Rulers fall into various categories, but we are here concerned with the grants known as inams or gifts. Inam-grants of State lands have always been held to be resumable at will by the Ruler, this right of resumption being treated as one of his sovereign rights. This right is not affected by any lapse of time or by the terms of the grant however absolute they may be. Resumability was an inseparable incident of an Inam of State lands and no grantee could ordinarily question the right of the Ruler to resume the grant on the ground that the grant was ancient or absolute in its terms. The right to resume such Inams could be exercised by the grantor's successor whose act of resumption also could not be questioned by the grantee or his successor. This right of resumption was, however, subject to precedents and general usage obtaining in the State concerned: see Webb's Political Practice, Chap.8, Title alienation, Resumption and Reversionary Rights, paras. 6 and 7. The above rules apply to the Inam of State lands properly so called but in my view they do not apply to cases of Inams of personal properties of the ruler and such inams are governed by the same rules which govern gifts by one private individual to another. I shall, however, revert to this topic again at its proper place. I shall now take up the consideration of the various contentions advanced on behalf of the appellant State.

7. The learned Advocate General contended that the Nawab was a sovereign in his State and his act of resumption which was the exercise of a sovereign right could not be questioned in his Courts. The only remedy, according to him, which a grantee had was to approach the paramount power, who might intervene by means of political advice, but the Civil Court had no jurisdiction to call into question the legality of the order of resumption passed by him. On this point one may refer to Agency notification No.10 of 1913 by which it was decided that the Darbar's right of resumption should ordinarily be heard as a Political suit. See Webb's Political Practice, Chap.8, para.7. This notification supports the proposition that the jurisdiction of Civil Court was ordinarily barred in resumption cases. But the notification referred to cases of resumption arising in non-jurisdictional Talukas under Thana circles (administered areas) and cases of resumption by the rulers of States with full jurisdiction such as the Junagadh State, which had Courts of their own, stood on a different footing. The Agency did not directly exercise any jurisdiction in such States and consequently we shall not expect to find any decision of an Agency Court or Officers bearing on the question of the State Court's competence to call into question the order of resumption passed by its Ruler and no such decision was cited during the argument. Nevertheless, according to Col. Webb, it was assumed by the Agency authorities that the grantee had no legal remedy in the State Courts against the Ruler and that the proper procedure where an order of resumption was challenged by him was to approach the paramount power, who, after a miscellaneous political inquiry, might in its discretion intervene by tendering advice to the Ruler. This assumption lends colour to the argument that a Ruler's right of resumption cannot be challenged in his own Courts and that the only remedy by a grantee aggrieved by such order was to seek the political intervention of the paramount power. Col. Webb, however, holds that this

assumption is entirely erroneous and summarises the position in the following words.

> "As a guide to what constitutes rightful resumption, the reader may be reminded that Government have held that each case has to be decided on facts and general usage, but it is obviously insufficient for a Darbar to plead that its sovereign right of resumption gives it carte-blanche to do as it likes in this respect. Resumption, when it is true act of state, i.e., an act in the interests of the State and dictated by the requirements of State of policy, is undeniably justifiable and incapable of being impugned or of constituting a cause of action in a suit; but resumption which is tantamount to and is the. result of an arbitrary order of the Chief inspired by avarice or desire for personal revenge or by another personal (as opposed to State) motive cannot be called an Act of State and should, on the analogy of the following case, be considered as property providing a cause of action for a suit in the State Court against the author of the order."

The learned author then refers to the case of - '*Forester v. Secretary of State*'[1], I shall refer to this ruling later on.

8. It, therefore, appears that the jurisdiction of the State Courts to question the Ruler's (Nawab of Junagadh) order of resumption is not based upon the theory that the Ruler cannot be sued in his own Court but is founded on the inherent resumability of an Inam of State lands and on the fact that in exercising the right of resumption the Ruler is exercising his sovereign right in the interests of the State. If, however, the order of resumption is a arbitrary order actuated by avarice or other personal motive it is not a true act of resumption and the Court could call into question the legality of such order even though it was dressed up as a resumption and in my opinion the same principle holds good where an act of resumption amounts to expropriation of private property. In - '18 WR 349' the Privy Council held that the resumption by the East India Company of a certain estate held under the Jaidad tenure (i.e. rent free land held under an obligation to keep up a body of troops to be employed when called upon in the service of a Sovereign) under the Scindia which was later on recognised by the East India Company itself by a treaty with the holder was not an act of State but an act done under colour of a legal title and the jurisdiction of the Civil Courts to question the legality of the resumption could not be excluded. This case is authority for the proposition that the act of resumption of a subject's land, who holds it under a legal title, is not an act of State and the Civil Courts have jurisdiction to see whether the subject has been able to make out the title which he claims against the ruler. If therefore the Nawab had resumed the suit property, the Junagadh State Court would have had jurisdiction to ascertain the true nature of his order of resumption and of defendant 2's title and if the administrator is to be regarded as the Nawab's successor; which was the contention advanced by the learned Advocate General, his act too could be questioned in a Civil Court.

9. But it is contended that the Administrator stands on a different footing than the Nawab for he was also acting on behalf of the paramount power, viz., the Central Government, which had

assumed the administration of the State at the request of the State Council and the people. His act, according to the learned Advocate General, which was in effect the act of the paramount power was, therefore, an act of State and could not be questioned in a Court of law. This argument is inconsistent with his next submission that the Administrator's order was a valid order under the Extra Provincial Jurisdiction Act, 1947. The assumption of extra provincial jurisdiction by the Central Government by taking over the administration of the Junagadh State through the Regional Commissioner was an act of State and so also was the Administrator's appointment; but the position is thereafter regularised by the application of the Extra Provincial Jurisdiction Act. Section 5 of the Act makes all acts of Government in
pursuance of the exercise of its extra Provincial jurisdiction as valid as if they were done under a local Municipal Law and it cannot be contended that an act which seeks its justification in the Municipal Law of the State over which extra Provincial jurisdiction is exercised can ever be called an act of State.

10. The learned Advocate General next contended that the Administrator's order of resumption was a valid order by virtue of the provisions of Section 5, Extra Provincial Jurisdiction Act, 1947, and cannot be questioned in a Civil Court. Now the extra-provincial jurisdiction has been defined by the Act as any jurisdiction which by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government has for the time being in or in relation to any area outside the Provinces. Sub-section (1) of Section 3 of the Act makes it lawful for the Central Government to exercise extra-provincial jurisdiction in such manner as it thinks fit. Sub-section (2) empowers the Central Government to delegate its extra-provincial jurisdiction to any Officer or any authority in such manner and to such extent as it thinks fit. Section 4 confers upon it the powers to make such rules as may seem to it expedient for the effective exercise of any extra-provincial jurisdiction of the Central Government. Section 5 declares that every act and thing done, whether before or after the commencement of the Act, in pursuance of any extra-provincial jurisdiction of the Central Government in any 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. Section 6 enacts that if in any proceeding, civil or criminal, in a Court established in the Province or by the authority of the Central Government outside the Province, any question arises as to the existence or extent of any extra-provincial jurisdiction of the Central Government, the Secretary to the Government of India in its appropriate department shall on the application of the Court, send to the Court the decision of the Central Government on that question and that decision shall, for the purposes of the proceedings be final. The section further prescribes the procedure for obtaining the decision of the Central Government. Section 7, which is the last section of the Act, is a repealing and saving section. The learned Advocate General argued that the Central Government had lawfully assumed extra provincial jurisdiction over the Junagadh State by taking over the administration of that State at the request of the State Council and the people of the State and it was entitled to exercise extra provincial jurisdiction by virtue of the Act. That the order of the Administrator resuming the suit property was passed in pursuance of the Central Government's extra provincial jurisdiction and under Section 5 of the Act, the order was as valid as if it was passed under a

local law of the Junagadh State. Moreover if there was any doubt about the extent or existence of the Administrator's jurisdiction to pass the order, it was the duty of the Court to obtain a decision of the Central Government. But it was not competent to question the validity of the order. This argument would have great force if the order of resumption had been made by the Central Government itself, for the Act does not authorise the Civil Courts to examine the existence or extent of the extra provincial jurisdiction of the Central Government. But the order has been passed by the Administrator under the authority delegated to him by the Central Government under Section 3(2) of the Act. If the Administrator's order falls within the scope and limit of his delegated authority it would be an act of the Central Government in pursuance of its extra provincial jurisdiction and its validity could not have been questioned by Court. But if the Administrator's order is outside the scope and limit of his authority it cannot be regarded as an act of the central Government to which Section 5 or Section 6, Extra Provincial Jurisdiction Act apply but his own act without authority or legal sanction and cannot be upheld.

We have, therefore, to see whether it is shown that his order is in excess of his authority. The order of the Central Government delegating its authority to the Administrator is not produced and consequently it is not possible to ascertain the extent or scope of the authority delegated to him. But there is the Regional Commissioner's Proclamation dated 9-11-47. The Proclamation declares that :

> "The first task of myself (Regional Commissioner) and my Officers will be to ensure complete peace and order throughout Junagadh State territory and to give even justice to all communities."

The majority community of the State was enjoined with a special responsibility for the protection of the minority. It was therefore to bring order out of chaos and to give justice to all communities that the extra provincial jurisdiction was assumed by the Central Government through the Regional Commissioner. In these circumstances the Administrator's instructions could only be to further the ends mentioned in the Proclamation. He was sent out to restore order and deal justice amongst the subjects and to introduce the rule of law in the State, and it could not have been the intention of the Central Government that he should set aside all canons of the law of private property of the subjects and resume private property otherwise than in accordance with established law. It would indeed be startling to hear that we should uphold any act of the Administrator, without reference to the proclaimed objects of the assumption of the administration of the Junagadh State on the ground that it was covered by the authority delegated to him in the absence of the production of the Central Government's instructions, and I think that on materials before us we are justified in holding that the Administrator's authority was circumscribed by the objects contained in the Regional Commissioner's Proclamation and that any act of the Administrator which was not conducive to these objects was outside the scope of his authority and cannot be upheld under Section 5 of the Act. The learned Advocate General had mentioned during the course of his arguments that the delegation of the authority to the Administrator by the Central Government was never questioned in the trial Court and therefore

the Government's instructions to the Administrator were not produced. This argument was in answer to my question that the power to delegate authority to the Administrator was vested by the Extra Provincial Jurisdiction Act in the Central Government only and it could not be exercised by the Regional Commissioner by whom the Administrator was appointed and the Regional Commissioner could not validly confer upon him the authority to act under the Extra Provincial Jurisdiction Act and consequently the Administrator's order cannot be upheld under Section 5 of the Act. To this question the learned Advocate General's reply was that if this point had been raised in the lower Court the State Government would have produced the necessary authority from the Central Government. This submission appears to me to be reasonable and we must assume, in the absence of any objection from the other side in the trial Court, that the Administrator was exercising extra provincial jurisdiction in the Junagadh State under the authority duly delegated to him by the Central Government though his initial appointment was made by the Regional Commissioner. But the contention that the Court's jurisdiction was barred under the Extra Provincial Jurisdiction Act has been raised by the appellant State itself and it has to satisfy us that the Administrator's authority extended to doing acts not falling within the scope of the Regional Commissioner's Proclamation. All that we can assume on the materials before us is that though the Administrator was acting in the exercise of authority delegated to him by the Central Government the extent of his authority extended only to doing acts in furtherance of the aims and objects mentioned in the Proclamation.

11. We have therefore to see whether the Administrator's order, which is the subject matter of the suit, is one which can be held as a true act of resumption of State property according to well established principles of Political law and therefore within the scope of his delegated authority or whether it is resumption of private property and as such outside the scope and ambit of the declared aims of the Regional Commissioner's Proclamation and therefore outside his authority. The evidence shows that the suit property was purchased by the Nawab from his private property and the question is whether he could hold private property and deal with it as a private individual and whether a gift of such property should be treated as a gift of private property under the Mahommedan Law. On this subject I can do no better than quote from Sir Raymond West's Minute, the relevant paras 8 to 11 from which have been fully set out in Ccl. Webb's Political Practice. Says the learned author of the Minute :

> "A Chief may well be allowed to make private acquisition and to deal with them like a private individual as the sovereign in England has by statute been allowed to do. But as in England safeguards have been provided against abuse, so here the enrichment of the Chief's private purse, of his dependents and favourites, at the cost of the State ought to be prevented and corrected. The function of supervision and control to be exercised in such cases is in the highest sense an imperial one and should be examined on considerations of a benevolent and far-seeing policy. It cannot safely be foregone and it must rest in a measure on the received jural and moral notions of the country and the time."

It appears, therefore, that the notion that the Ruler could make private acquisitions and deal with

them like a private individual was accepted even in the eighties of the last century and the paramount power was only concerned to see that the Ruler did not enrich himself at the cost of the State under the guise of making private acquisition and the paramount power interfered when such appeared to be the case. On the analogy of the above principles the Civil Court before whom the Ruler's act of resumption is called into question has the right to see whether the Ruler's so called private acquisition is a *bona fide* and genuine acquisition by him or whether it is a device for enriching himself at the cost of the State and frittering away the State's resources. The learned Advocate General argued that though the theory that a Ruler could acquire private property was accepted by Sir Raymond West, it had not been followed by the Government and that the true theory was that a Ruler could not have any property which he claimed to be his private property apart and distinct from the State property. In support of this argument he cited Government Resolution No.343 dated 22-1-1878 and - '*Shah Chhagan Khetshi v. Bai Himelbai*[2]', The Government Resolution relates to the acquisition by a ruler of property in another State and is
governed by completely different principles and therefore does not apply to the present case. In - '*Shah Chhagan Khetshi v. Bai Himelbai*', however, it was held that the sonless widow of, a Bhagdar of an estate was a Bhagdar owner in her own right and therefore a Talukdar and could have no private assets and that whatever arrangements a Talukdar may make as regards private allowance for himself, all his property is the property of the estate and he can own no private property whatsoever. This decision is authority for the learned Advocate General's argument that a ruler can have no private property, but no reasons are given for the decision and Sir Raymond West's Minute does not appear to have been brought to the notice of the learned Judicial Assistant who decided the case. That Minute has been completely adopted by the Government and the only rider which was placed on it was that :

> "On occasions arising for the application of the principle laid down in the Minute due attention must in each case be paid to ascertain local custom and precedent." (Webb's Political Practice, Chap.8).

The distinction between the private property of the Ruler and State property has been recognised by the Central Government at the time of the formation of the Saurashtra State and while the Rulers made over all the State properties to the Saurashtra State, they were allowed to keep and treat their private property as private owners. The position has been described in the revised edition of the White Paper on Indian States issued by the Ministry of States, Government of India (1950) in the following terms (Part 7) :

> "156. The instruments of Merger and the Covenants establishing the various unions of States, are in the nature of over-all settlements with the Rulers who have executed them. While they provide for the integration of States and for the transfer of power from the Rulers, they also guarantee to the Rulers Privy purse, succession to gaddi, rights and privileges and full ownership, use and enjoyment of all private properties belonging to

them, as distinct from State properties..."

In view of the above statement of policy in the White Paper, we would prefer to follow the principle enunciated in Sir Raymond West's Minute. It may well be that where a ruler makes no distinction between private and State property, all property owned by him may be regarded as State property, but there is no reason to extend this principle to cases where a ruler fixes his privy purse reasonably proportionate to the resources of his State. In such cases the private property of the ruler must be distinguished from State property and he has a right to deal with the private property as a private owner.

12. We have next to see whether the Nawab had any private property. In 1939 the Nawab issued the Firman No.211 of 1939 dated 5-7-1939 published in Gazette Extraordinary of the Junagadh State dated 1-8-1939. The Firman states that the Nawab had decided that as from the beginning of next financial year i.e. from 1-11-1939 an annual amount of Rs.12 lacs should be allotted to the Civil list, which sum was to be exclusive of the income from the Khangi (private) villages. It appears from the Firman that at that time the Nawab possessed nine villages as his private villages and the firman orders that the number of his private villages was not to exceed nine. Therefore as from the date of this firman, the Nawab made a distinction between the State revenue and the privy purse. It is not suggested that the Nawab's privy purse was out of all proportion to the resources of the State, which was the premier State in Kathiawar and comprised the most fertile tracts of the peninsula. The State moreover owned a port, railway and forests and had a gross annual revenue exceeding Rurjees one crore. In St. 1999 and St. 2000 (1942-43 and 1943-44) the actual receipts amounted to Rs.1,10,50,595 and Rs.1,41,59 808 respectively against the sanctioned receipts Rs.85,85,696 and Rs.1.10,17,914 respectively. The sanctioned and actual expenditure from the Nawab's privy purse were for these years as shown in Appendix XXI B of the Report. It is therefore not possible to contend that in fixing the privy purse he tried to enrich himself at the expense of the State. The Nawab's privy purse must, therefore, be regarded as his private property.

13. Now the land in question originally belonged to the State and was validly sold to Khokher and the sanad Ex.34 was duly issued to him. Prabhulal Ex.29 who acted on behalf of the vendor defendant 2 states that the Nawab had purchased it from Khckher for Rs.18,000/- or Rs.19,000/- and paid the consideration from his private purse by instalments. This statement has not been challenged nor has any evidence been led on behalf of the appellant State to show that the consideration was paid from the public revenue and not from the Nawab's privy purse although the evidence on behalf of the State was led after Prabhulal was examined. We must, therefore, take it that the property was purchased by the Nawab from his privy purse and was his personal property which he had full authority to transfer and thereby confer a good title on the transferee.

14. The incident of resumability which is (inseparable from the grant of an Inam of State land cannot apply to dealings by the Nawab of his personal property. The Nawab's title to the suit

property was extinguished from the date of the gift and defendant 2's (donee's) title was created therein and he became the 'de jure' owner of the property and could validly sell it to the plaintiff and in resuming it the Administrator resumed private property which defendant 2 had acquired by a lawful title against the State and in doing so he exceeded the authority delegated to him by the Central Government. His act cannot, therefore, be regarded as an act of the Central Government nor can it be upheld under the Extra Provincial Jurisdiction Act.

15. It was next urged that the original Ruka, Ex.31, conferred upon the donee, defendant 2, only the right to use the property and did not confer an alienable title upon him and consequently the purchaser i.e. the plaintiff who had notice of the contents of the Ruka could not get a better title to the suit property than his vendor. The Administrator's order also mentions this. The Ruka, however, is merely a title deed issued by the State on the strength of the gift from the Nawab. The foundation of the defendant's title is the gift by the Nawab and under the Mahommedan Law, which would apply to this gift, the condition against the alienation being repugnant to the gift, is void and the gift remains good. Defendant 2, therefore, obtained a saleable title to the suit property from the date of the gift and the plaintiff obtained an equally good title under the sale deed.

16. An argument against the competency of the Court to entertain the suit was urged under Section 4 of the Saurashtra Adjudication of (Special Courts) Suits Ordinance, 1949, No.72 of 1949, which will hereafter be referred to as the Ordinance. Under sub-section (1) of Section 3 of that Ordinance all suit's or proceedings which were before the date of the coming into force of the Ordinance triable by Special Courts constituted or established by or under the authority of the Government of India or the Rulers of the Covenanting States are required to be tried and disposed of by Civil Courts. Sub-section (2) of that section provides for transfer by the Government of these suits and proceedings to Civil Courts. Sub-section 4(2), however, enacts that nothing in Section 3 shall apply to any suit against the Government in respect of any dispute between the Government and any landholder arising out of any provisions of any treaty, engagement, agreement, Sanad, Hakpatrak or other similar instruments which were exercised or granted by a Ruler of a Covenanting State before the integration of his State. This Ordinance came into force on 19-11-1949 on which date it was published in the Gazette. It was argued on the strength of provision of Section 4(2) that on the coming into force of the Ordinance the Court of the Civil Judge, Junagadh, to which the suit had been transferred ceased to have jurisdiction to try it because it involved the dispute between the plaintiff and the Government arising out of the Sanad granted by the State. This contention cannot be accepted. Section 4(2) of the Ordinance applies to those suits only which were pending before a Special Court on the date of the coming into force of the Ordinance (19-11-1949). This suit was, however, transferred to the Court of the Civil Judge, Senior Division, before 13-9-1949 as appears from the order sheet and was pending before an ordinary Civil Court of the Saurashtra State before the Ordinance came into force and to such suits this Ordinance cannot apply. We, therefore, reject the argument that the provisions of the Ordinance bar the Civil Court's jurisdiction.

17. Another argument against the competency of the Court to try the suit was urged on the strength of a decision of this High Court in - '*Dadia Ottamchand Motichand v. Shahabuddin Jamal Thanani*[3]*',* In that case it was held that a suit could not be filed against a Covenanting Ruler in any of the Saurashtra Courts by reason of the provisions of Article 14 of the Covenant. In order to appreciate this argument it is necessary to set out the' history of the formation of the United State of Kathiawar and the integration of the Administration of the Junagadh State with that of the United State of Saurashtra. Thirty rulers of principal States of Kathiawar signed a Covenant on 23-1-1948 bringing into existence the United State of Kathiawar comprising the territory of their States, for the welfare of the people and entrusted to a Constituent Assembly the task of drawing up a democratic constitution for that State within the framework of the Constitution of India to which they had already acceded. Article 14 of the Covenant reads as under :

> "XIV. No enquiry shall be made by or under the authority, of the State of Kathiawar, and no proceedings shall lie in any Court in that State, against the Ruler or any Covenanting State, whether in a personal capacity or otherwise, in respect of anything done or omitted to be done by him or under his authority during the period of his administration of that State."

This High Court after referring to the various Articles of the Constitution of India and Section 306 of the Government of India Act, 1935 held that the Covenanting Rulers enjoyed absolute immunity from being sued in Courts of law of the newly formed State, whether in personal capacity or otherwise, in respect of anything done or omitted to be done by them or under their authority during the period of their administration of their respective States. But it may be noted that on this date the Junagadh State had no Ruler nor was the Covenant signed on behalf of the Junagadh State. The States of Junagadh, Manavadar, Mangrol, Bantwa, Sardargadh and Babariawad also had not joined in the Covenant. But later on the duly elected representative of these States recommended to the Government of India and the Government of the United State of Saurashtra, as it was then called, that the administration of these States be integrated with that of the United State of Saurashtra. The Rulers of the Covenanting States thereupon entered into a supplementary Covenant with the concurrence of the Government of India to provide for such integration and for the participation of the elected representatives of the people of these States into the Saurashtra Constituent Assembly. The supplementary Covenant which is set cut in App.36 of the White Paper, contains five Articles of which the material Article 3 reads as under (While Paper p.249) :

> "From a date to be agreed upon between the Governments of the said States and the Government of the United State of Saurashtra, with the concurrence of the Government of India, the administration of the said States shall be integrated with that of the United State of Saurashtra and thereafter the legislative and executive authority, powers and jurisdiction of the United State of Saurashtra shall extend to the said States to the same extent as it extends to the territory of any Covenanting State and except the provisions of

Articles 10, 11, 12, 13 and 14 and subject to Articles 4 and 5 of this Supplementary Covenant the provisions of the Covenant shall apply in relation to the States in the same manner as they apply to the Covenanting States."

The administration of the Junagadh State was thereafter integrated with that of the United State of Saurashtra on 20-1-1949. Therefore as from that date the legislative and executive authority and jurisdiction of the United State of Saurashtra extended to the Junagadh State to the same extent as it extended to the rest of the territories of the Covenanting States. But Article 14, which excluded the liability of the Covenanting Rulers to be sued in the Courts of the Saurashtra State, has been expressly omitted from the Supplementary Covenant and therefore no exemption can be claimed from the process of Civil Courts of the Saurashtra State by any one on behalf of the Junagadh State. The decision of this High Court in - 'Dadia Uttamcband's case', which is expressly based on Article 14 of the covenant has, therefore, no application to this case and the Court's jurisdiction to entertain this suit cannot be questioned on the strength of the provisions of the Covenant or the Supplementary Covenant.

18. Therefore in our opinion the Court had jurisdiction to decide the question whether the order of resumption passed by the Administrator was a true act of resumption of State property or whether it amounted to resumption of private property. We hold that the suit property was the personal property of the Nawab and the gift of it by him to defendant 2 was governed by the provisions of the Mahommedan Law and was not liable to resumption and consequently the plaintiff obtained an indefeasible title to it from his vendor, defendant 2, and the Administrator's order directing its resumption was illegal and ultra vires of his authority and no immunity can attach to it under the provisions of Sections 5 and 6, Extra Provincial Jurisdiction Act. Under the circumstances, the question whether the plaintiff was entitled to be heard before the order was passed against him does not arise though if the order of the Administrator was within his competence, there is no doubt that the plaintiff would not have been entitled to question it on the ground that he was not heard before the order was made. The plaintiff thus succeeds on merits.

19. We shall now deal with the learned, Advocate General's objection against the sufficiency of the court-fees paid by the plaintiff on the plaint. The plaintiff's contention in the lower Court was that primarily he had sought relief for declaration against the appellant State and therefore his plaint was not liable to payment of 'ad valorem' court-fees on the alternative relief for recovery of Rs.30,541-2-0 against defendant 2 and had accordingly paid the fixed court-fee of Rs.10/- on the declaratory relief only. The learned Civil Judge accepted this contention. The suit, however, embraces two distinct subjects viz., the question about the legality of the administrator's order of resumption and the plaintiff's right to recover Rs.30.541-2-0 from defendant 2 on the ground of failure of consideration. It is true that the plaintiff will get only one relief in the suit viz. either the declaration against the Saurashtra State or the decree for Rs.30,541-2-0 against defendant 2 and it may be that the plaintiff principally wanted that the administrator's order should be set aside and his prayer for the alternative relief was in that sense only a subsidiary prayer. Nevertheless two

distinct subjects are the subject matter of the suit and the plaint is therefore chargeable with the amount of the court-fee in respect of both of them. The learned Judge seems to have thought that for the purposes of the court-fees the suit fell within the category of suits for a declaration without a consequential relief, contemplated by Article 17, Section II of the Court-fees Act. His decision on the valuation of the suit for the purposes of the court-fees is clearly erroneous and has prejudiced public revenues and must be corrected. We hold that the plaintiff should have been ordered to pay 'ad valorem' court-fees on Rs.30,541-2-0 in addition to the court-fees already paid by him and we hereby order him to make up the deficient court-fees accordingly within one month. If the plaintiff pays the deficient court-fees within the prescribed time, the appeal will stand dismissed but he shall bear his own costs of the suit as well as the appeal as he prosecuted the suit on an insufficiently stamped plaint. If he fails to make up the deficiency, the suit shall stand dismissed
with costs throughout.

Shah, C.J.

20. I agree.

Order accordingly.

Cases Referred.

[1]18 WR 349
[2]19 KLR 201
[3]3 Sau LR 95 (C)