

Maharaj Kumar Tokendra Bir Singh vs Secretary To The GoI Ministry Of Home ... on 23 March, 1964

Equivalent citations: AIR 1964 SUPREME COURT 1663

Bench: K.N. Wanchoo, J.C. Shah, N.R. Ayyangar

CASE NO.:

Writ Petition (civil) 123 of 1963

PETITIONER:

MAHARAJ KUMAR TOKENDRA BIR SINGH

RESPONDENT:

SECRETARY TO THE GOI MINISTRY OF HOME AFFAIRS & ANR.

DATE OF JUDGMENT: 23/03/1964

BENCH:

P.B. GAJENDRAGADKAR (CJ) & K.N. WANCHOO & J.C. SHAH & N.R. AYYANGAR & S.M. SIKRI

JUDGMENT:

JUDGMENT 1964 AIR (SC) 1663 The Judgment was delivered by : GAJENDRAGADKAR GAJENDRAGADKAR, C. J. : This petition has been filed by the petitioner Maharaj Kumar Tokendra Bir Singh under Art. 32 of the Constitution challenging the validity of S. 87B of the Civil Procedure Code, as well as of the order passed by the Government of India according partial consent to the suit which the petitioner proposes to file against His Highness Okendrajit Singh, Maharaja of Manipur. The petitioner is the son of His Highness Sir Chura Chandra Singh, the late Maharaja of Manipur who died on the 6th November, 1941. At his death, he left behind him six sons, including the petitioner, and considerable movable and immovable properties which, according to the petitioner, were his self-acquired properties and as such, did not form part of the Manipur State. The said Sir Chura Chandra Singh had abdicated the throne in favour of his eldest son Bodh Chandra Singh, and, in consequence, Bodh Chandra Singh was recognised as the Ruler of Manipur State.

2. On the 20th September, 1949, the State of Manipur merged in the Dominion of India under an agreement of Merger executed on the said date. As a result of the said Agreement, all the properties belonging to the State vested in the Dominion Government and the private properties of the Maharaja were left unaffected and were, according to the petitioner, inherited and owned by all the members of the coparcenary under the provisions of the Dayabhaga School of Hindu Law. It appears that at the time of the said Merger, Maharaja Bodh Chandra Singh had prepared an inventory of all his private properties and after scrutiny, it had been approved by the Government of India. While approving the said inventory the Government of India had definitely stated that the effect of the declaration of the said property as private property was that the State had no. claim on it. The said declaration was approved without prejudice to any rights of third parties. Later, on the 9th

December, 1955, Maharaja Bodh Chandra Singh died, and he has been succeeded by his minor son Maharaja Okendrajit Singh living under the care and guardianship of his mother Rani Waikhom Nigol Komalanbati Devi. It is against this minor Maharaja that the petitioner intends to file a suit for partition.

3. According to the petitioner, the estate belonging to the joint family in which he has a share, consists of several movable and immovable properties. They have been described in Schedules A to E and X - Schedule A describes the landed properties within the Union territory of Manipur; Sch. B deals with properties at Gauhati in Assam; Sch. C with properties in Nadia District in West Bengal; Sch D with properties in Mathura District. Uttar Pradesh; Sch. E represents the war compensation of Rs. 54, 894/- awarded to the family in respect of certain items of property; and Sch. X mentions the fire arms brought and owned by the late Maharaja Sir Chura Chandra Singh.

4. As required by S. 87B, C. P., the petitioner applied to the Government of India for its consent to this proposed suit against the minor Maharaja, and by its order passed on the 23rd October, 1961, the Government of India has accorded consent to the petitioner to file the suit in respect of properties mentioned in Schedules A and E, and not in respect of properties mentioned in Schedules B, C, D and X. By his present petition, the petitioner contends that S. 87B which has imposed the statutory condition on the petitioner that he must obtain the consent of the Government of India before filing a suit the minor Maharaja of Manipur, is constitutionally invalid; and he also urge that even if the said section were valid, there was no jurisdiction in the Government of India to accord consent in respect of some properties and refuse to accord consent in respect of some others. He further contends that the order passed by the Government of India should be read as having been passed under S. 87B according consent to the whole of the suit, and the refusal to accord such consent in respect of properties mentioned in Schedules B, C, D and X should be held to be invalid.

5. The question about the validity of S. 87B C. P. C., has been recently considered by this Court in the case of Narottam Kishore Deb Verma v. Union of India, W. P. No. 87 of 1962 D/- 6-3-1964 : 1964 AIR(SC) 1590). In that case, this Court has referred to its earlier decision in the case of Mohan Lal Jain v. Shri Sawai Man Singhji, 1962- 1 SCR 702 : 1962 AIR(SC) 73) and has come to the conclusion that the validity of S. 87B could not be successfully challenged. In coming to this conclusion, this Court has referred to the historical and legislative background which had to be examined in determining the validity of the said section, and held that considered in the light of the said background, the provisions of Ss. 86 and 87B must be regarded as constitutionally valid. Even so, it was observed that the Central Government may seriously examine the question as to whether S. 87B should be allowed to continue on the statute book any longer in respect of suits which may be filed against the Rulers of former Indian States as regards causes of action accruing after the 26th January, 1950. It was also pointed out in that case that in dealing with applications for consent, scrupulous care should be taken not to reject the said applications in a casual manner, and consent could be legitimately refused only where, prima facie it appeared to the appropriate authority that the claim sought to be preferred by the proposed suit was frivolous. If the authority conferred on the Government of India under S. 87B was not carefully exercised, it would create dissatisfaction in the minds of litigants that their legitimate claims which raised triable issues between them and the Rulers of former Indian States were being satisfied by an executive order. In view of this decision,

we cannot accede to the argument urged by the petitioner before us in the present case that S. 87B is invalid.

6. Mr. Agarwala for the petitioner attempted to argue that even if S. 87B is valid, it did not apply to the present case, because the minor Maharaja Okendrajit Singh against whom the petitioner proposes to file a suit, cannot be regarded as a Ruler of the former State of Manipur within the meaning of S. 87B. In that connection, he has invited our attention to the definition of the word "Ruler" prescribed by Art. 366(22) of the Constitution. Article 366(22) provides that "Ruler" in relation to an Indian State means Prince, Chief, or other person by whom any such covenant or agreement as is referred to in cl. (1) of Art. 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler. The argument is that since the minor Maharaja against whom the suit is proposed to be filed did not sign the covenant or agreement of merger specified in the first part of the definition, he cannot claim to be a Ruler, and so, he is not a Ruler of the former State of Manipur under S. 87B. This definition is clearly misconceived. This definition prescribed by Art. 366(22) is an inclusive definition and its latter part takes in successors of Rulers who satisfy the test of its first part and so, the minor Maharaja in question who has been recognised by the President as the successor of his deceased father, must be held to be a Ruler under Art. 366(22) and as such, is entitled to claim the status of a Ruler of the former State of Manipur under S. 87B (2)

(b).

7. That takes us to the question as to whether the conditional order passed by the respondent, the Secretary to the Government of India, Ministry of Home Affairs, is valid under S. 87B. Before dealing with this point, it is necessary to point out that what we propose to say about the validity of the impugned order would be confined only to orders which can be passed under S. 87B in regard to Rulers of former Indian States. Section 87B (1) provides that the provisions of S. 85 and of sub-secs. (1) and (3) of S. 86 shall apply in relation of the Rulers of any former Indian State as they apply in relation to the Ruler of a foreign State. Section 86(1) itself deals with the cases of Rulers of foreign States and grants them the specified immunity from being sued in the municipal courts of India without the consent of the Central Government certified in writing by a Secretary to that Government. The conditional immunity granted to the Rulers of foreign States by S. 86(1) is based on considerations of diplomatic immunity in favour of foreign Ruling Monarchs which is recognised by International Law and convention. In dealing with case falling under S. 86 (1), considerations of International Law and tradition and other diplomatic aspects of the question would be relevant, and so, in according consent to a suit proposed to be filed against a Ruler of a foreign State, it would be open to the Central Government to take all the said considerations into account before deciding whether consent should be accorded or not. That, however, is a matter with which we are not concerned, in the present petition. What we are concerned with in the present petition is the validity and propriety of the order passed by the respondent according partial or conditional consent to the institution of the suit which the petitioner intends to file against the minor Maharaja of Manipur.

8. In dealing with this question, it is necessary to emphasise that the power conferred on the Central Government to accord, or refuse to accord, consent to the proposed suit, must be very carefully exercised. In the affidavit filed on behalf of the respondent, it has been averred that the Central Government's consent has been given in every case where a prima facie and justiciable claim is made out against a Ruler, and that consent has been refused only in such cases in which the Government felt convinced that the object of the suit was exploitation, blackmailing or vexatious harassment of Rulers, or the suit related to anything done or omitted to be done by Rulers or under their authority during the period of their administration of the States. In our opinion, if this is the approach which is invariably adopted by the Central Government in dealing with applications for consent under S. 87B, no serious grievance can be legitimately made. It is plain that S. 87B is intended substantially to save the Rulers of former Indian States from harassment which would be caused by the institution of frivolous suits; excepting cases where the claims appear to be frivolous prima facie, the Central Government should normally accord consent to the litigants who want to file suits against Rulers of former Indian States whenever it appears that the claims disclosed justifiable and triable issues between them and the Rulers sought to be sued. Normally, it is not the function of the Central Government to attempt to adjudicate upon the merits of the claim intended to be made by the litigants in their proposed suits; that is the function of civil courts of competent jurisdiction, and so, the Central Government should not attempt to assume the jurisdiction of a civil court and decide whether a claim is well-founded or not before according consent to the institution of the suit. That is one aspect of the matter which must be borne in mind in dealing with the petitioner's grievance.

9. Besides, it may be relevant to observe that if the authority conferred, under S. 87B is judiciously and properly exercised, it would serve the same purpose which S. 80 of the Code serves in regard to suits filed against the Government. Just as in the case of suits falling under the purview of S. 80 the legislature requires that notice should be given of the plaint with all the particulars specified by S. 80 and in the manner prescribed for the purpose of avoiding unnecessary litigation, so in the case of applications made under S. 87B government may reasonably and legitimately try to see if the institution of the suits can be avoided by asking the Ruler of a former Indian State to consider the claim and settle it amicably without litigation. Section 80 is intended and may in some cases, lead to settlement of disputes where the government is satisfied that the claim intended to be made by the litigant is well-founded. Section 87B may also achieve the same result. It is, of course true that under S. 80 there is no question of any consent or sanction being given as there is in S. 87B; but we have referred to S. 80 in this context to indicate one possible purpose which S. 87B, like S. 80, may serve. That is another aspect of the matter which has to be borne in mind.

10. In the present case, however, the respondent appears to have adjudicated upon the merits of the petitioner's claim. In the affidavit filed on its behalf, it has been stated that the properties described in Schedules B, C, D, and X, are not partible and they belonged to the minor Maharaja. Apparently, the respondent took the view that the said properties were in the nature of private properties attached to the Rulership which devolved from one Ruler to another and that the other heirs of the Rulers have no share therein. That is why it was decided not to accord consent to the petitioner to file a suit in respect of the said properties. This part of the affidavit clearly indicates that the respondent virtually decided the merits of the claim made by the petitioner.

11. A similar approach of adjudicating upon the merits of the claim made by the petitioner appears to have been adopted by the respondent in respect of another matter. The petitioner in his intended plaint has alleged that when the Central Government accorded approval to the inventory made by the Maharaja of Manipur, it had specifically stated that the said approval was without prejudice to the rights of third parties, and the petitioner contends that the rights of third parties thus saved include the rights of the Maharaja's coparceners like the petitioner. The respondent's affidavit shows that it does accept this construction of the communication addressed by the Central Government to the Maharaja when approval was accorded to the inventory in question. The affidavit says that the rights of third parties mentioned therein do not refer to the coparceners, but only to outsiders who may claim any rights in respect of the said properties. That again is a matter which raises a substantial issue and it was inexpedient for the respondent and was not even open to it to decide that dispute when it considered the question as to whether consent should be accorded to the petitioner's suit or not.

12. It is thus clear that the conditional and partial consent accorded by the respondent to the petitioner's suit is substantially based on the fact that the Government attempted to adjudicate upon the merits of the petitioner's claim, and that in our opinion introduces an infirmity in the impugned order. Section 87B authorises the Central Government either to accord consent or to refuse to accord such consent; it is not open to the Central Government to impose any condition on such consent, or to accord consent only in part, or to refuse it in part, particularly in cases where reliefs are claimed on one and the same cause of action. If it is held that the Central Government can impose conditions in granting consent, it would virtually be conferring jurisdiction on the Central Government to adjudicate upon the dispute; and that is not the object of S. 87B. Reading the order passed in the present case, we are inclined to hold that the Central Government has accorded consent to the petitioner to file his suit and when that is done, the power conferred on the Central Government by S. 87B has been exercised. The further direction contained in the order that consent would not be accorded in respect of properties mentioned in Schedules B, C, D and X, is clearly invalid. We feel no difficulty in reaching this conclusion, because the affidavit filed by the respondent in clear and unmistakable language has indicated the approach adopted by the respondent in dealing with this matter. In a sense, the affidavit is fair and thorough and has made no attempt to disguise the approach which was adopted by the respondent before it passed the impugned order. Having regard to the relevant statements made in the affidavit, we are satisfied that the Central Government would have accorded consent to the entire suit if only it had not persuaded itself to adjudicate upon the merits of the petitioner's claim in respect of the properties described in Schedules B, C, D and X. The authority conferred on the Central Government under S. 87B is, as we have observed in the case of *Narottam Kishore Deb Verma*, W. P. No. 87 of 1962 D/- 6-3-1964 : 1964 AIR(SC) 1950) out of tune with the equality before law which is guaranteed by Art. 14; and it may even affect the litigants fundamental rights under Art. 19(1)(f) and (g), and so, it would be necessary for the courts to examine the validity of the orders passed under S. 87B whereby consent has been refused in part only, with meticulous care. That is why we are disposed to hold that in the circumstances of this case, and having regard to the statements made in the affidavit filed by the respondent, the order passed by the respondent should be construed as an order according consent to the institution of the suit which the petitioner proposes to file and treat the latter portion of the order in regard to the properties described in Schedules B, C, D and X as being invalid.

13. The result is, the petition, in substance, succeeds and we grant him the declaration that the order passed by the Central Government is an order which accords consent to the institution of the suit which he proposes to file against the Maharaja Okendrajit Singh. The petitioner would be entitled to his costs from the respondent.