Maharaj Umeg Slng And Others vs The State Of Bombay And Others on 6 April, 1955

Equivalent citations: 1955 AIR 540, 1955 SCR (2) 164, AIR 1955 SUPREME COURT 540, 1957 BOM LR 709

Author: Natwarlal H. Bhagwati

Bench: Natwarlal H. Bhagwati, Syed Jaffer Imam

PETITIONER:
MAHARAJ UMEG SlNG AND OTHERS

Vs.

RESPONDENT:
THE STATE OF BOMBAY AND OTHERS.

DATE OF JUDGMENT:
06/04/1955

BENCH:
BHAGWATI, NATWARLAL H.
BENCH:
BHAGWATI, NATWARLAL H.
MUKHERJEE, BIJAN KR. (CJ)
DAS, SUDHI RANJAN
AIYYAR, T.L. VENKATARAMA
IMAM, SYED JAFFER

CITATION:
1955 AIR 540 1955 SCR (2) 164

ACT:
Bombay Merged Territories and Areas (jagirs Abolition) Act, 1953 (Bombay Act XXXIX of 1954)-Whether ultra vires-Agreement of Merger with, and letters of guarantee to, Bulers of States by the Government of India-Clause 5 of the letters of guarantee-Scope-Legislative powers of States under Article 246 of the Constitution-Limitations thereon-Article 363 of the Constitution-Bar to Courts' jurisdiction-Fundamental rights-Articles 14, 19(1)(f), 31(2) of Con-stitution-Applicability in view of Article 31-A(2)(a).

HEADNOTE:
Under Article 246(2) and (3) of the Constitution, the Legis-

lature of a State has plenary powers to legislate with respect to matters enumerated in Lists II and III of the Seventh Schedule to the Constitution. The legislative competence of the State Legisla
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ture can only be circumscribed by express prohibition contained in the Constitution itself and unless there is any provision in the Constitution expressly prohibiting legislation on a subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the State Legislature enjoys to legislate on the topics enumerated in Lists II and III of the Seventh Schedule to the Constitution. In view of Article 246 of the Constitution, no curtailment of legislative competence can be spelt out of the terms of Clause 5 of the Letters of Guarantee given by the Dominion Government to the Rulers of "States" subsequent to the agreements of Merger, which guaranteed, inter alia, the continuance of Jagirs in the merged "States". Indeed, Clause 5 of the Letters of Guarantee itself saved the legislative right of the State of Bombay subject to the limitation that enactments of the State shall not be discriminatory in nature.
Attacks on the validity of the said Act on the basis of the rights guaranteed by Articles 14, 19(1)(f), and 32(2) of the Constitution cannot be countenanced in view of Article 31-A(2)(a) of the Constitution,
Article 363 (1) of the Constitution barred the jurisdiction of Courts in disputes arising out of any provision of the agreements of merger and the Letters of Guarantee.
Held, that Bombay Act XXXIX of 1954, the impugned Act, was intra vires the State Legislature.
Petitions Nos. 337 to 349, 365, 366, 481 and 690 of 1954 Dis. missed.
Petition No. 364 of 1954 Adjourned.
Vajesingji v. Secretary of State (51 I.A. 357), Secretary of State v. Sardar Rustam (68 I.A. 109), State of Saraikella v. Union of India (1951 S.C.R. 474), Thakur Jagannath v. The United Provinces ([1943] F.C.R. 72), Thakur Jagannath v. The United Provinces ([1946] F.C.R. 111), referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Petitions under Article 32 of the Constitution for the enforcement of fundamental rights. K.L. Gauba, (Gopal Singh, with him), for the Petitioners in Petitions Nos. 337 to 343 and 481 of 1954.

K.L. Gauba, (S. D. Sekhri, with him), for the Petitioners in Petitions Nos. 344, 446 and 349 of 1954.

K. L. Gauba, (R. Patnaik and S. D. Sekhri, with him), for the Petitioner in Petition No, 345 of 1954,

K.L. Gauba, (N. C.Chakravarty and S. D. Sekhri, with him) for the Petitioner in Petition No. 347 of 1954. K.L. Gauba, (B. Moropant and S. D. Sekhri, with him), for the Petitioner in Petition No. 348 of 1954.

Rajni Patel and M. S. K. Sastri, for the Petitioner in Petition No. 364 of 1954.

Rajni Patel and I. N. Shroff, for the Petitioners in Petitions Nos. 365 and 366 of 1954.

J.B. Dadachanji and Rajinder Narain, for the Petitioner in Petition No. 690 of 1954.

M.C. Setalvad, Attorney-General for India, C. K. Daphtary, Solicitor-General for India (P. A. Mehta, R. H. Dhebar for P. G. Gokhale, with them), for the Respondents in all Petitions.

1955. April 6. The Judgment of the Court was delivered by BHAGWATI J.-These petitions under article 32 of the Constitution are directed against the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, Bombay Act XXXIX of 1954 which was passed by the Legislature of the State of Bombay to abolish jagirs in the merged territories and merged areas in the State of Bombay. The Bill was passed by the Legislature on the 22nd September 1953 and received the sanction of the Upper House on the 26th September 1953. The President gave his assent to it on the 13th June 1954 and by a notification dated the 15th July 1954 it was brought into effect from the 1st August 1954. In view of the notification the Petitioners filed these petitions on the 30th July 1954 challenging the vires of the Act (hereinafter called the impugned Act) and asking for the issue of appropriate writs restraining inter alia the State of Bombay from giving effect to its provisions. On applications made to this Court on the 31st July 1954 the operation of the impugned Act was stayed pending the bearing and final disposal of the petitions, The Petitioners in Petitions Nos. 337, 344, 345, 346, 347 and 349 of 1954 are relations of the Ruler of the erstwhile State of Idar. The Petitioners in Petitions Nos. 338 and 342 of 1954 are relations of the Ruler of the erstwhile State of Chhota Udaipur. The Petitioners in Petitions Nos. 339 and 341 are relations of the Ruler of the erstwhile State of Devgad Baria. The Petitioner in Petition No. 343 of 1954 is a relation of the Ruler of the erstwhile State of Rajpipla. The Petitioners in Petition No. 340 of 1954 are jagirdars of the erstwhile State of Rajpipla. The Petitioner in Petition No. 348 of 1954 is a relation of the Ruler of the erstwhile State of Bansda. The Petitioners in Petitions Nos. 365 and 366 of 1954 are jagirdars of the erstwhile States of Idar and Lunawada respectively. The Petitioner in Petition No. 481 of 1954 is a relation of the Ruler of the erstwhile State of Mohanpur. The Petitioners in Petition No. 690 of 1954 are the holders of personal Inams from the erstwhile State of Rajpipla. All the petitioners except the last claim to be hereditary jagirdars under grants made by the respective States for the maintenance of themselves, their families and dependents and hold the jagirs as Jiwai Jagirs. The holders of the personal Inams in Petition No. 690 of 1954 used to pay salami to the erstwhile State of Rajpila and are included within the definition of "jagirdar" being holders of agir villages within the meaning of the definition thereof contained in the impugned Act.

The Petitioner in Petition No. 364 of 1954 claims to be the owner of 60 villages in the patta or territory of Moti Moree comprised in the erstwhile State of Idar as the Bhumia or under-lord and contends that his holding does not fall within the definition of jagir as given in the impugned Act

and that therefore in any event the State of Bombay is not entitled to enforce -the impugned Act against him. All these Petitioners have challenged the vires of the imapugned Act mainly relying upon the agreements of merger entered into by the Rulers of the respective States with the Dominion of India on or about the 19th March 1948 and the collateral letters of guarantee passed by the Ministry of States in their favour on subsequent dates, the contents of which were regarded as part of the merger agreements entered into by them with the Dominion of India.

The merger agreements were in the form given in Appendix XIII to the White Paper at page 183:

> "FORM OF MERGER AGREEMENT SIGNED BY RULERS OF GUJARAT AND DECCAN STATES AGREEMENT MADE THIS day of between the Governor-General of India and the of Whereas in the immediate interests of is desirous that the administration of the State should be integrated as early as possible with that of the Province of in such manner as the Government of the Dominion of India may think fit; It is hereby agreed as follows:-
>
> ARTICLE 1.
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> The of hereby cedes to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the Governance of the State and agrees to transfer the administration of the State to the Dominion Government on the day of 1948 (hereinafter referred to as "the said day"). As from the said day the Dominion Government will be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit.
>
> ARTICLE 2.
>
> The shall with effect from the said day be entitled to receive from the revenues of the State annually for his privy purse the sum of rupees free of taxes. This amount is intended to cover all the expenses of the Ruler and his family, including expenses on account of his personal staff, maintenance--of his residences, marriages and other ceremonies, etc. and will neither be increased nor reduced for any reason whatsoever. The said sum may be drawn by the in four equal instalments in advance at the beginning of each quarter by presenting bills at the State Treasury or at such other Treasury as may be specified by the Dominion Government.
>
> ARTICLE 3.
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> The shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of this agreement.
>
> The will furnish to the Dominion Government before the day of

1948 an inventory of all the immovable property, securities and cash balance held by him as such private property. If any dispute arises as to whether any item of property is the private property of the or State property, it shall be referred to such officer with judicial experience as the Dominion Government may nominate and the decision of that officer shall be final and binding on both parties.

ARTICLE 4.

The shall be entitled to all personalprivileges enjoyed by them whether within or outside the territories of the State, immediately before the 15th day of August 1947.

ARTICLE 5.

The Dominion Government guarantees the succession, according to law and custom, to the gadi of the State and to the personal rights, privileges, dignities and titles. In confirmation whereof Mr. Vapal Pangunm Menon, Secretary to the Government of India in the Ministry of States, has appended his signature on behalf and with the authority of the Governor-General of Indiab and has appended his signature on behalf of himself, his heirs and successors, of Dated Secretary to the Government of India, Ministry of States".

The letters of guarantee subsequently executed by the Ministry of States in favour of the respective Rulers contained the following guarantees:-

"(1) Your privy purse will be fixed in accordance with the formula applied in relation to the fixation of the privy purse of the Deccan States Rulers whose States have merged into the Bombay Province. The amount will be fixed in perpetuity to you, your heirs and successors, and will neither be increased nor reduced for any reason whatsoever.

It will be free of all taxes, whether imposed by the Government of Bombay or by the Government of India and it will not be taken into account in the assessment of your world income to income-tax or super-tax.

(2) The cash balances and other assets of your State on the day you transfer the administration of your State to the Dominion Government will, as far as possible, be spent for the benefit of the people of your State.

(3) You will be entitled to the full ownership, use and enjoyment of all Darbari or private properties (as distinct from State Properties) belonging to you on the date of your making over the administration of your State to the Dominion Government. Darbari properties will include palaces, houses, residences, guest houses, stables, garages, quarters, outhouses, etc. which are at the date of transfer of administration in bonafide personal use or occupation of the Ruler or members of his family or personal staff, irrespective of whether the property is situated in the Capital, or at any

other place in the State, or in Bombay, or anywhere else outside.

(4) The continuation in service of the permanent members of the public services of your State is hereby guaranteed on conditions which will be no less advantageous than those on which they were serving on 1st April 1948. In the event of continuation of service not being possible in any case, reasonable compensation will be paid.

(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 1st April 1948 as also the enjoyment of the ownership of Khangi villages, lands, jagir, grants, etc. existing on 1st April 1948 are hereby Guaranteed. This guarantee is without prejudice -Co -the right of Government of Bombay to issue any legislation which does, not discriminate against the states and their subjects. (6) All emblems, insignia, articles and other Paraphernalia of the Ruler will be considered as belonging to, and be regarded as his private property.

(7) No order passed or action taken by you before the date of making over the administration to the Dominion Government will be questioned unless the order was passed or action taken after the 1st of April 1948 and is considered by the Government of India to be palpably unjust or unreasonable. The decision of the Government of India in this respect will be final.

(8) No enquiry shall be made nor shall proceedings lie in any Court in India against you, whether in a personal capacity or otherwise, in respect of anything done or omitted to be done by you or under your authority during the period of your administration of the State. (9) Every question of disputed succession in regard to a Gujarat State which has signed an agreement integrating the administration of the State with that of the Province of Bombay shall be decided by a Council of Rulers of Gujarat States after referring it to the High Court of Bombay and in accordance with the opinion given by that High Court. All questions relating to the rights, dignities and privileges of the Ruler will also be considered by the Council of Rulers who shall make suitable recommendations to the Government of Bombay and the Government of India. The Council shall consist of the Rulers of all full jurisdictional Gujarat States, whether salute or non- salute. No ruler who is less than 21 years of age shall however be a member of the Council. The Council will elect one of its members to be the President of the Council. The President and the members of the Council will hold office for a term of five years from the date on which they enter upon the duties of their respective offices.

2.The contents of this letter will be regarded as part of the merger agreement entered into by you with the Governor- General of India".

The contention which has been urged before us by the Petitioners relying upon clause 5 of the Letters of Guarantee aforesaid is that the enjoyment of the ownership of the jagirs existing on the 1st April, 1948 was guaranteed, that this guarantee was binding on the State of Bombay, that the State of Bombay and therefore the State Legislature had waived the right, if any, or in any event had no legislative competence to enact any legislation depriving the holders of the jagirs of their right of ownership over the same, and that even though the Government of Bombay has reserved to itself the right to issue any legislation which did not discriminate against the states and their subjects, the

impugned Act was ultra vires inas- much as no legislation could be undertaken which would have the effect of depriving the holders of the jagirs of their ownership over the same and the provisions of the impugned Act were in any event discriminatory against the States and their subjects or in other words the impugned Act was confiscatory and also discriminatory.

It was contended on the other hand on behalf of the State of Bombay that the agreements of merger and the letters of guarantee were executed by the Dominion of India and were not binding on the State of Bombay, that the Petitioners were not parties to the agreements of merger and letters of guarantee and that they were not entitled to enforce the same, that even if they be treated as parties thereto the dispute between the parties arose out of the provisions of the agreements and covenants which were entered into or executed before the commencement of the Constitution by the Rulers of the respective states and to which the Government of Dominion of India was a party and that therefore this Court had no jurisdiction to interfere in the said disputes by virtue of the provisions of article 363 of the Constitution, that the State Legislature had plenary powers of legislation within the ambit of its sphere unless the Constitution itself expressly prohibited legislation on the subject either absolutely or conditionally, that no such prohibition could be spelt out of the terms of clause 5 of the letters of guarantee and that the impugned Act was intra vires the powers of the State Legislature and could not be challenged. Once that position was established it was further urged that the jagirs in question were estates within the definition of the expression in article 31-A(2)

(a) of the Constitution and the impugned legislation being a legislation providing for the acquisition by the State of the estates and the rights therein or for the extinguishment or modification of the same could not be challenged as void on the ground that it was inconsistent with or abridged any of the rights conferred by any provisions of Part III of the Constitution, and that therefore the impugned Act could not be challenged as violative of any of the fundamental rights of the Petitioners. It was also urged that none of the provisions of the impugned Act were confiscatory or in any manner whatever discriminatory, fair and adequate compensation having been provided for the abolition of the jagirs and the States and their subjects not having been dealt within any discriminatory manner as compared with the subjects of the original State of Bombay.

As regards the contention that the agreements of merger and the letters of guarantee were executed by the Dominion of India and were not binding on the State of Bombay it was urged on behalf of the Petitioners that the Government of the Dominion of India was certainly bound by those guarantees and this obligation of the Dominion Government devolved upon the Province of Bombay when the erstwhile States which were parties to the agreements of merger and the letters of guarantee became merged in the Province of Bombay, under clause 8 of the States' Merger (Governors' Provinces) Order, 1949 (Appendix XLIV, White Paper, Page

297), that these obligations were thus deemed to have been undertaken by the Dominion Government on behalf of the absorbing Province, viz., the Province of Bombay and were binding upon the Province of Bombay, and that when the Constitution came into force from the 26th January 1950 all rights, liabilities and obligations of the Government of each Governors' Province whether arising out of any contract or otherwise were under article 294 of the Constitution to be the rights, liabilities and obligations respectively of the Government of each corresponding State and

these obligations of the Province of Bombay accordingly became the obligations of the State of Bombay. It was further urged that the State of Bombay was thus bound by all the obli- gations which bad been undertaken by the Dominion Government under the agreements of merger and letters of guarantee above referred to, and it could not lie in the mouth of the State of Bombay to repudiate the same.

This argument is not without force, but we do not consider it necessary to decide this question because even assuming that the State of Bombay was bound by these obligations, the question still remains how far the Petitioners before us are entitled to enforce these obligations against the State of Bombay. The Petitioners were certainly not parties to these agreements of merger and letters of guarantee eo nominee. They could only claim to be parties to the same by reason of the fact that the Rulers of the erstwhile States did not negotiate these agreements of merger or obtain the letters of guarantee only in respect of their personal rights and properties but also represented the States and their subjects in the matter of obtaining the same and the subject of these States were therefore represented by the Rulers and were entitled to the benefit of whatever obligations were undertaken by the Dominion of India qua the States and their subjects. It is therefore arguable that the Rulers of the erstwhile States as also their subjects would be in a position to enforce these obligations. This position was however sought to be negatived by relying upon the following observation of their Lordships of the Privy Council in Vajesingji Joravarsingji v. Secretary of State for India in Council(1) at page 360:-

> "But a summary of the matter is this: when a territory is acquired by a sovereign state for the first time that is an act of state. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal Courts. The right to enforce remains only with the high contracting parties".

These observations were quoted with approval in Secretary of State v. Sardar Rustsam Khan & Others(2) at page 124. It was therefore urged that it will be the high contracting parties, viz., the Rulers of the respective States who would be in a position to enforce these obligations and not the Petitioners for whose benefit these obligations were undertaken by the Dominion Government.

We do not feel called upon to pronounce upon the validity or otherwise of these contentions also for the simple reason that the Petitioners would be out of Court either way. If they were deemed to be parties to the agreements of merger and letters of guarantee they would be faced with the bar to the maintainability of the petitions under article 363 of the Constitution which lays down that neither the Supreme (1) 51 Indian Appeals 357.

(2) 68 Indian Appeals 109.

Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of the Constitution by any 'Ruler of an Indian State and to which the Government of the Dominion of India..... was a party. If on the other hand they were deemed not to have been parties to the same they would not be the contracting parties and would certainly not be able to enforce these obligations.

It was therefore urged on behalf of the Petitioners that the dispute between the parties did not arise out of the provisions of the agreements of merger and the letters of guarantee which were entered into or executed by the Rulers of the respective States and to which the Government of the Dominion of India was a party. According to the Petitioners they merely challenged the vires of the impugned Act and relied upon clause 5 of the letters of guarantee in order to establish the position that the State Legislature had no legislative competence to legislate on the subject of the abolition of jagirs. That was, it was submitted, not a dispute arising out of the agreements of merger and letters of guarantee but arose out of the act of the State Legislature in enacting the impugned Act in direct contravention of the guarantee incorporated in clause 5 of the letters of guarantee. This argument however would not avail the Petitioners, because if one looked into the averments contained in their petitions it was clear that the whole ambit of the petitions was to enforce clause 5 of the letters of guarantee. The Petitioners relied upon clause 5 of the letters of guarantee which had been obtained by the Rulers of the erstwhile State from the Dominion Government and complained that the State Legislature had enacted the impugned Act which it had no power to enact having regard to clause 5 of the said letters of guarantee and were wrongfully depriving the Petitioners of the jagirs, the ownership of which had been guaranteed thereunder. The whole of the petitions were nothing else except the claim to enforce the Petitioners' rights under the letters of guarantee, and the disputes therefore were clearly in respect of the agreements of merger and the letters of guarantee and were covered by article 363 (1) of the Constitution. A similar contention had been raised on behalf of the plaintiffs in State of Seraikella and Others v. Union of India and Another(1) and was repelled by Kania, C.J. at page 490 as under:---

> "The plaintiff contends firstly that it had signed the Instrument of Accession through its Ruler. The State next complains that, acting beyond the powers given over under the Instrument of Accession,.the Dominion of India and the State of Bihar are trespassing wrongfully on its legislative and executive functions, that the Dominion of India and the State of Bihar are making laws which they have no power to make, having regard to the Instrument of Accession, and are wrongfully interfering with the administration of the State beyond the rights given to them under the Instrument of Accession. The whole plaint is nothing else except the claim to enforce the plaintiff's right under the Instrument of Accession. The dispute therefore in my opinion clearly is in respect of this Instrument of Accession and is covered by Article 363(1) of the Constitution of India. The question of the validity of the different enactments and orders is also based on the rights claimed under the Instru- ment of Accession so far as the plaintiff is concerned".

It could not therefore be urged that what the Petitioners were doing was not to enforce the obligations undertaken by the Dominion Government under the agreements of merger and the letters of guarantee, or that the disputes between the parties did not arise out of the provisions of the agreements of merger and the letters of guarantee which were entered into or executed by the Rulers of the respective States and to which the Government of Dominion of India was a party within the meaning of Article 363 of the Constitution.

(1) 1951 S.C.R. 474.

If that was the position the jurisdiction of this Court was ousted and this Court could not interfere in those disputes. Assuming however that the Petitioners were entitled to enforce the obligation and guarantee incorporated in clause 5 of the letters of s guarantee the further difficulty in the way of the Petitioners is that the State Legislature was fully competent to enact the impugned Act notwithstanding the terms of the guarantee. The legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any provision in the Constitution expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the State Legislature enjoys to legislate on the topics enumerated in the Lists II & III of the Seventh Schedule to the Constitution. It was conceded on behalf of the Petitioners that the topic of legislation which was covered by the impugned Act was well within List II of the said Schedule and the vires of the impugned Act could not be challenged on that ground. The ground of attack was that the Dominion Government and therefore the State Government bad waived its right to legislate on the topic of the abolition of jagirs or had in any event put a fetter or limitation on their power to issue any legislation in that behalf by the terms of the guarantee contained in clause 5 of the letters of guarantee. It was contended that under the terms of clause 5 an absolute guarantee had been given by the Dominion Government in regard to the enjoyment of the ownership of jagirs and that the Dominion Government and therefore the State of Bombay were precluded from enacting any legislation which had the effect of destroying that ownership. This contention however could not be supported by the terms of clause 5 which embodied in the first part thereof the terms of the guarantee, and went on to provide in the second part that this guarantee was without prejudice to the right of the Government of Bombay to issue any legislation which did not discriminate against the States and their subjects. It was therefore not an absolute guarantee but was circumscribed or cut down by the reservation of the power to make law with respect to jagirs provided such law did not discriminate against the States and their subjects. The right of the Government of Bombay which was thus reserved covered the whole of the guarantee embodied in the first part of the clause and there was nothing in these terms which would go to show that the ownership of the jagirs could not be touched and the legislation, if any, was to be enacted in regard to certain incidents of enjoyment of such ownership. The right of the Government of Bombay to issue any legislation with regard to the enjoyment of the ownership of jagir lands was expressly reserved and this right covered also legislation in regard to the abolition of the jagirs and the Government of Bombay was therefore entitled under the terms of this clause 5 to issue any legislation in regard to the same provided however that such legislation did not discriminate against the States and their subjects. That was the only fetter or limitation, imposed upon the right of the Government of Bombay to issue any legislation in regard to the enjoyment of the ownership of jagir lands and if that fetter or limitation could also be imposed on

the State Legislature the Petitioners would have had a right to challenge the impugned Act on the ground that it discriminated against the States and their subjects. The fetter or limitation upon the legislative power of the State Legislature which had plenary powers of legislation within the ambit of the legislative heads specified in the Lists II & III of the Seventh Schedule to the Constitution could only be imposed by the Constitution itself and not by any obligation which bad been undertaken by either the Dominion Government or the Province of Bombay or even the State of Bombay. Under Article 246 the State Legislature was invested with the power to legislate on the topics enumerated in Lists II & III of the Seventh Schedule to the Constitution and this power was by virtue of article 245(1) subject to the provisions of the Constitution. The Constitution itself laid down the fetters or limitations on this power, e.g., in article 303 or article 286(2). But unless and until the Court came to the conclusion that the Constitution itself had expressly prohibited legislation on the subject either absolutely or conditionally the power of the State Legislature to enact legislation within its legislative competence was plenary. Once the topic of legislation was comprised within any of the entries in the Lists II & III of the Seventh Schedule to the Constitution the fetter or limitation on such legislative power had to be found within the Constitution itself and if there was no such fetter or limitation to be found there the State Legislature had full competence to enact the impugned Act no matter whether such enactment was contrary to the guarantee given, or the obligation undertaken by the Dominion Government or the Province of Bombay or even the State of Bombay. The Petitioners would have a legitimate grievance in the matter of the deprivation of their rights of ownership of the jagir lands in so far as the States and their subjects were discriminated against, but they would not be able to have their grievance redressed by this Court for the simple reason that the State Legisla- ture was at all events competent to enact the impugned Act not being fettered at all by the terms of clause 5 of the letters of guarantee. The provisions of article 294(b) of the Constitution which is said to have transferred the obligations of the Government of the Province to the State of Bombay would not by involving the transference of the obligation undertaken by the Dominion Government in clause 5 of the letters of guarantee to the State Government impose a fetter or limitation on the legislative competence of the State Legislature to enact legislation on any of the topics enumerated in Lists II & III of the Seventh Schedule to the Constitution. The remedy of the Petitioners would be else- where and not in this forum. The learned Judges of the Federal Court gave an answer to a similar complaint of the Taluqdars of Oudh made by them against the United Provinces Tenancy Act XVII of 1939 in Thakur Jagannath Baksh Singh v. The United Provinces(1) at page 87:-

> "We desire, however, to point out that what they are now claiming is that no Legislature in India has any right to alter the arrangements embodied in their sanads nearly a century ago; and, for all we know, they would deny the right of Parliament itself to do so. We hope that no responsible Legislature or Government would ever treat as of no account solemn pledges given by their predecessors; but the readjustment of rights and duties is an inevitable process, and one of the functions of the Legislature in a modern State is to effect that readjustment, where circumstances have made it necessary, with justice to all concerned. It is however, not for this 'Court to pronounce upon the wisdom or the justice, in the broader sense, of legislative acts;
>
> it can only say whether they were validly enacted....."

These observations were quoted with approval by Their Lordships of the Privy Council in Thakur Jagannath Baksh Singh v. The United Provinces(1) at page 122 and we also would observe in the same strain that we are not concerned with the policy of the State Legislature in enacting the impugned Act for abolition of jagirs but we are only concerned with the question whether the impugned Act was validly enacted.

No argument has been advanced before us which would enable us to hold that the impugned Act was ultra vires the State Legislature, the only ground of attack being that it was in contravention of the guarantee given in clause 5 of the letters of guarantee. But that position is of no avail to the Petitioners.

Considerable argument was addressed before us based on the comparison of the provisions of the various Acts of the Bombay State Legislature enacted during the years 1949 to 1953 in regard to the abolition of the various tenures obtaining within the State of Bombay with the provisions of the impugned Act, with a view to show that the provisions of the impugned Act were discriminatory against the States (1) 1943 F.C.R. 72.

(2) 1946 F.C.R. III.

and their subjects within the meaning of clause 5 of the letters of guarantee. We have not thought it necessary to refer to the same in view of the conclusion which we have reached above that the impugned Act was intra vires the powers of the State Legislature and the State Legislature was quite competent to enact the same.

Even if it could be demonstrated that the provisions of the impugned Act were confiscatory as well as discriminatory in the manner suggested, the jagirs of the Petitioners (except in the case of the Petitioner in Petition No. 364 of 1954) were all estates within the meaning of the term as defined in Article 31-A(2)(a) of the Constitution and even if the impugned Act provided for the acquisition of the estates or of any rights therein or for the extinguishment or modifica- tion of any such rights the impugned Act could not be challenged as void on the ground that it was inconsistent with or took away or abridged any of the fundamental rights conferred by Part 11I of the Constitution. Any challenge therefore on the ground of the impugned Act violating the fundamental rights of the Petitioners under article 14 or article 19(1)(f) or article 31(2) of the Constitution was not available to the Petitioners. On the other hand if the grievance was that the impugned Act had brought about dis- crimination in breach of clause 5 of the letters of gua- rantee then the dispute clearly arose out of the letters of guarantee and would by article 363 be placed beyond the jurisdiction of this Court. The Petitions of the Petitioners except Petition No. 364 of 1954 which would be dealt with immediately hereafter therefore fail and are liable to be dismissed.

In addition to the grounds common to all the Petitions which we have already dealt with above the Petitioner in Petition No. 364 of 1954 claims that he is the owner of the 60 villages in the Putta or territory of Moti Moree comprised in the erstwhile State of Idar as the Bhumia or underlord and contends that his holding does not fall within the definition of jagir as given in the impugned Act. In support of his contention he has traced the history of Moti Moree since 1250 A.D. and in any event

since 1800 A.D when the then Chieftain of Moti Moree entered into a treaty with the Maharaja Zalimsinh of Modasa whereby in consideration of payment of Rs. 361 annually the said Zalimsinh agreed to protect Moti Moree against the attacks of the neighboring State of Doongarpur. He has pointed out that thereafter Modasa was absorbed into the Taluka of Amnagar in 1821 and subsequently in about 1849 it reverted to Idar State and continued with the Idar State until the latter merged into the Province of Bombay in 1948. He contends that he and his predecessors were enjoying and exercising full sovereign rights over Moti Moree ever since the said treaty of 1800 and their position had remained unchanged, their only liability being to pay Rs. 361 annually for protection. He further contends that they were enjoying the rights of excise and customs and revenue, that they did not pay any revenue to the State of Idar and enjoyed and continued to enjoy rights over all lands, forests, minerals, river beds, village sites, etc. and that when the Ruler of Idar wanted that there should be uniform customs levy throughout the State, the said Ruler had to give compensation to the Petitioner and had also similarly negotiated with them and had to pay compensation to them in respect of salt, opium, excise etc. He has pointed out that Rs. 457 for customs' Rs. 40 for opium and Rs. 7 for salt were being paid annually by the erstwhile State of Idar and thereafter by the Government of State of Bombay to him by way of compensation for these sovereign rights of his, which amounts were set off against Rs. 361 being the annual payment of protection which he paid as aforesaid to them. These rights of his recognised by the erstwhile State of Idar and also by the State of Bombay constituted him a Thakur or underlord of Moti Moree and he contends that his estate of Moti Moree is not a jagir within the definition of the term given in the impugned Act.

Our attention has also been drawn in this behalf to Bombay Gazetteer, Vol. 5 (1880), page 398, where Mori (Meghraj) is described as the estate of the original landlords Bhumias otherwise described as petty chiefs and underlords and to page 409 where the underlords (Bhumias) are stated to be the early chiefs who settled in Idar at least not later than the Rathod conquest (about 1250). The State of Bombay on the other hand has denied the several allegations contained in the petition and contends that in the year 1891 the erstwhile State of Idar had conferred upon the Thakore of Moti Moree the powers of a Third Class Magistrate as an act of "grace", that in 1902 the management of the estate was taken over by the erstwhile State of Idar and one Kamdar Mathurlaji was appointed as Japtidar, that in 1910 the management was lifted as a special case and the arrears of Nazrana were ordered to be recovered in installments by the erstwhile State of Idar that in several documents Moti Moree was described as Bhomia Jagir within the definition of the term Jagir as given in the impugned Act and that the sum of Rs. 361 was still being regularly paid even after merger as "Kichari hak". It therefore contends that the Thakore of Moti Moree, the Petitioner is a jagirdar and Moti Moree is a jagir within the meaning of the definition thereof given in the impugned Act. These allegations and counter-allegations do not however carry the matter any further. In order to exclude Moti Moree and the Petitioner from the operation of the impugned Act it will be necessary for the Petitioner to establish satisfactorily that Moti Moree is, not a jagir within the definition thereof given in the impugned Act. Even though the allegations of the Petitioner go far enough to make it probable that Moti Moree was neither held by the Petitioner and his ancestors under a grant or was not recognised as a grant by the Ruler of the erstwhile State of Idar, that would not be enough to enable us to grant him the relief prayed for by him. The question requires to be completely thrashed out and adjudicated upon by a Court of law after going into the evidence

adduced before it by both the parties. The learned Attorney-General appearing for the State of Bombay has therefore submitted that this question should be enquired into by a proper tribunal and the Petitioner should be referred to a civil suit in order to establish his rights. We accordingly feel that the Petition No. 364 of 1954 should be adjourned till after the disposal of a civil suit to be filed by the Petitioner in the proper Court for a declaration that Moti Moree is not a jagir within the definition of the term as given in the impugned Act and for consequential reliefs. The learned Counsel for the Petitioner has given us to understand that a formal notice under Section 80 of the Civil Procedure Code in this behalf has already been served by the Petitioner on the State of Bombay. We therefore order that the Petitioner do file the necessary suit within 3 months from this date and this petition do stand adjourned till after the hearing and final disposal of that suit. The stay granted by this Court in this petition will continue in the meanwhile. We may record here that the learned Attorney-General on behalf of the State of Bombay has also given his undertaking not to take any steps against the Petitioner in the meanwhile. Petitions Nos. 337 to 349, 365, 366, 481 and 690 of 1954 will therefore stand dismissed. Petition No. 364 of 1954 will stand adjourned sine die till after the disposal of the civil suit to be filed by the Petitioner as above indicated. If no such suit is filed within the aforesaid period this petition will also stand dismissed. Each party will bear and pay the respective costs of the petitions.