

Kunwar Shri Vir Rajendra Singh vs Union Of India & Ors on 30 September, 1969

Equivalent citations: 1970 AIR 1946, 1970 SCR (2) 631, AIR 1970 SUPREME COURT 1946, 1970 2 SCR 631, 1970 MAH LJ 41, 1970 2 SCJ 343

Author: A.N. Ray

Bench: A.N. Ray, S.M. Sikri, G.K. Mitter, K.S. Hegde, P. Jaganmohan Reddy

PETITIONER:

KUNWAR SHRI VIR RAJENDRA SINGH

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT:

30/09/1969

BENCH:

RAY, A.N.

BENCH:

RAY, A.N.

SIKRI, S.M.

MITTER, G.K.

HEGDE, K.S.

REDDY, P. JAGANMOHAN

CITATION:

1970 AIR 1946

1970 SCR (2) 631

1969 SCC (3) 150

CITATOR INFO :

R 1971 SC 530 (96,138,212)

ACT:

Constitution of India, 1950, Arts. 363 and 366(22)--Recognition as Ruler of Indian State by President of India between two rival claimants--If also recognition of right to private property.

HEADNOTE:

The Dholpur State was one of the States which merged to form the United States of Rajasthan. Article XII of the Covenant entered into among the Rulers of the several States provided

that the Ruler of each covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties belonging to him, and Art. XIV provided. that succession according to law and custom, to the gaddi of such covenanting State, and to the personal rights, privileges, dignities and titles of the Ruler were guaranteed.

On the death of the last Ruler of Dholpur in 1954 without any male issue, a controversy, as to who was entitled to the rulership, arose between the petitioner, who was a senior member of a collateral branch, and the son adopted by the widow of the last ruler. The Government of India constituted a Committee consisting of the Chief Justice of the Rajasthan High Court and the Rulers of two other merging States to examine the rival contentions. The petitioner took part in the proceedings before the Committee, relied on Art. XIV of the Covenant, and disputed the jurisdiction of the Committee to go into the question. The Committee submitted its report and the President of India recognised the adopted son as the Ruler of Dholpur, under Art. 366(22) of the Constitution.

On the question of the validity of such recognition,

HELD : (1) Under Art. 366 the power of the President to recognise a Ruler is inherent in the Article. The words 'for the time being is recognised by the President' in the Article, are used not only in relation to a Ruler but also in relation to a successor of such Ruler. [636 C-E]

(2) Such an act of recognition is an exercise of political power by the President. It is a matter of personal status, and not of inheritance or of descent by devolution, nor is it based only on covenants and treaties. The covenants ceased to be effective after the enactment of the Constitution in so far as they were inconsistent with the Constitution. [637 B-C]

(3) The power to recognise a Ruler which is conferred on the President by the Constitution cannot be challenged on the ground that the power is unguided. It was in fact exercised by appointing a committee to examine the rival claims. Whatever rights the petitioner asserted in regard to succession were the subject matter of enquiry by the Committee. If the petitioner sought to rely on Art. XIV of the Covenant, he had to establish such a right based on custom or law before the appropriate authority. Under Art, 363 a dispute arising out of such recognition by virtue of a Covenant is not justiciable in a court of law. [636 E-H; 637 A-B]

(4) The right to private property is not embraced within Art. 366(22), and the President's notification recognising the Ruler did not state that the Ruler thereby became entitled to private properties of the late Ruler,

632

nor did it affect 'any private property in the possession of the petitioner. It only recognised the right to succeed to the gaddi of the Ruler. Such recognition entitles the Ruler

to the enjoyment of the privy purse and the personal rights, privileges and dignities of the Ruler of an Indian State. But the payment of any sum as privy purse is from the consolidated fund of India and, the privy purse is not an item of private property to which the Ruler succeeds. Therefore, there is no infringement of the petitioner's rights under Art. 19(1)(f) or Art. 31 by any executive fiat. [635 E-H; 636 A-B; 637 D]

(5) Nor did such recognition instantaneously invest the Ruler with property on the basis that rulership and property were blended together. If the petitioner had any competing rights with the Ruler in relation to any private property of the last Ruler, of which the Ruler came into possession after his recognition by the President, such a claim is not a fundamental right, nor was it established in any court of law. [637 F-H, 638 A-B]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 190 of 1966. Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights and Civil Appeal No. 1949 of 1966.

Appeal by special leave from the order, dated May 6, 1963 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeal No. 45-D of 1963.

Frank Anthony, M. V. Goswami, E. C. Agrawala and S. R. Agrawala, for the petitioner/appellant (in both the matters) Niren De, Attorney-General, L. M. Singhvi, and R. N. Sachthy, for respondent No. 1 (in W.P. No. 190 of 1966) and respondents Nos. 1 and 2 (in C.A. No. 1949 of 1966). M. C. Setalvad, C. K. Daphtary, A. K. Sen, Rameshwar Nath, P. L. Vohra and Mahinder Narain, for respondent No. 3 (in both the matters).

The Judgment of the Court was delivered by Ray, J. This is a common judgment in Writ Petition No. 190 of 1966 and Civil Appeal No. 1949 of 1966. The appellant made an application under Article 226 of the Constitution in the High Court of Punjab some time in the month of August, 1957, inter alia, for the relief as to why the records and proceedings of the case relating to the Dholpur Succession Enquiry Committee and the several notifications in that behalf mentioned in the petition should not be quashed. In the petition under Article 32 of the Constitution the petitioner asked for quashing all actions and proceedings, orders, directions and resolutions in connection with the delivery of the properties of the late Ruler of Dholpur to the respondent Hemant Singh, the adopted son of the late Ruler of Dholpur.

For the sake of brevity the petitioner who happens also to be the appellant will be referred to as the petitioner in this judgment.

The petitioner alleges that Maharaj Rana Udaibhan Singh of Dholpur died on 22 October, 1954 leaving behind private properties worth more than three crores of rupees. The estate left behind by

the said Ruler of Dholpur is claimed to be an impartible estate and, therefore, the petitioner claims to be entitled to the said estate according to law and custom of lineal male primogeniture.

The Dholpur State was formed in 1806. After the Indian Independence Act, 1947 the Dholpur State became integrated with the Matsya Union some time in the month of March, 1948. On 30 March, 1949 the United State of Rajasthan was formed. The Matsya Union was eventually merged in the United State of Rajasthan on 15 May, 1949. Some time in the month of March, 1949 there was a Covenant among the Rulers of several States comprised in the United State of Rajasthan. The Covenant inter alia, provided in Article XII that the Ruler of each covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties belonging to him on the date of his making over the administration of the State to the United State of Rajasthan and if any dispute arose as to whether any item of property is the private property or not, the dispute shall be referred to such person as the Government of India may nominate. Article XIV of the said Covenant provided that succession according to law and customs, to the Gaddi of each covenanting State, and to the personal rights privileges, dignities and titles of the Ruler were guaranteed and every question of disputed succession in regard to a Covenanting State was to be decided by the Council of Rulers after referring the same to the High Court of the United State of Rajasthan and in accordance with the opinion given by that High Court. On 10 May, 1949 the Dholpur State and other States of the Matsya Union which merged with the United State of Rajasthan adopted the covenant of the Rulers comprised in the United State of Rajasthan.

The last Ruler of Dholpur died on 22 October, 1954 and did not leave him surviving any direct male heir. The petitioner alleged that the petitioner and his brother were the sons of the undivided next younger brother of the late Ruler and were, therefore, the next senior survivors to the succession according to the law of primogeniture. The last Ruler of Dholpur left behind him surviving his daughter who was married to the Maharaja of Nabha. The last Ruler's widow adopted a grandson, viz., one of the sons of the daughter and thus arose a controversy as to who was entitled to the Rulership of Dholpur.

The Government of India by notification dated 22 December, 1954 constituted a Committee consisting of the then Chief Justice of the Rajasthan High Court, the Maharaja of Bharatpur and the Maharaja of Kotah to examine the contentions of the various claimants and to report to the Government of India who in the judgment of the said Committee was to be recognised by the President as the Ruler of Dholpur. Subsequently, there was a change in the Committee and the Maharaja of Kotah was replaced by the Maharaja of Dungarpur. It may be stated here that the petitioner took part in the proceedings before the said Committee and that the petitioner relied on Article XIV of the Covenant and disputed the jurisdiction of the aforesaid Committee to go into the rival claims of the Rulership of Dholpur. The Committee held sittings and submitted a report to the Government of India. By notification dated 13 December, 1956, the President of India in pursuance of clause (22) of Article 366 of the Constitution recognised His Highness Maharaja Rana Shri Hemant Singh as the Ruler of Dholpur with effect from 22nd October, 1954. Counsel on behalf of the petitioner contended, first, that the handing over or authorising taking over private properties worth more than three crores of rupees was by executive fiat and the Government Order was ex-facie bad and infringed Articles 19(1) (f) and 31 of the Constitution. The second contention was

that the recognition of a Ruler even if it was an instance of exercise of political power of the President was itself an insignia of property and, therefore, such recognition could only be by authority of law and would have to yield to fundamental rights. It was also said on behalf of the petitioner that after the Constitution, recognition of Ruler was not an exercise of political power. The third contention was that recognition of the Ruler under clause (22) of Article 366 of the Constitution meant recognising a fact that a person was a Ruler and the clause did not have the effect of empowering the President to create the fact of bringing into effect a Ruler by recognising a person as a Ruler. As a corollary to the contention it was amplified that clause (22) of Article 366 was mainly a defining or interpreting clause and, therefore, did not empower the President to recognise any Ruler. The fourth contention was that if there was any power to recognise the Ruler it was an arbitrary and unguided power and it would infringe the fundamental right to property. The fifth contention was that there was no dispute regarding Covenant inasmuch as ,succession did not arise out of the Covenant and, therefore, Article 363 of the Constitution was not attracted. The right to succession to private property was said to be independent of any covenant.

The first question which falls for consideration is whether there is any infringement of Articles 19(1)(t) and 31 of the Constitution by any executive fiat or the Government order. The petitioner's contention is that by the executive order private properties worth more than three crores of rupees were handed over to the Ruler in violation of the petitioner's fundamental rights of property. The notification dated 13 December, 1956 published in the Gazette of India on 22 December, 1956 was as follows :-

"In pursuance of Clause (22) of Article 366 of the Constitution of India the President is hereby pleased to recognise His Highness Maharaja Rana Shri hemant Singh as the Ruler of Dholpur with effect from 22nd October, 1954 in succession to His late Highness Maha- rajadhiraja Sri Sawai Maharaj Rana Sri Udaibhan Singhji Lokendra Bahadur Diler Jang Jai Deo, G.C.I.E., K.C.S.I., K.C.V.O."

It is apparent that there is no notification by virtue of which the Ruler became entitled to private properties. The notification which recognised the Ruler did not state that the Ruler thereby became entitled to private properties of the late Ruler. Mr. Attorney-General appearing for Union also made it clear that no right to property flowed from the Government Order of recognition of Rulership. It is manifest that the right to private properties of the last Ruler depends upon the personal law of succession to the said private properties. The recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This recognition of Rulership by the President is an exercise of political power vested in the President and is thus an instance of purely executive jurisdiction of the President. The act of recognition of Rulership is not, as far as the President is concerned, associated with any act of recognition of right to private properties. In order to establish that there has been an infringement of rights to property or proprietary rights, the petitioner has to establish that the petitioner owns or has a right to property which has been infringed by the impugned act. In the present case, the petitioner cannot be heard to say that the petitioner possesses any private property which has been invaded. The petitioner's contention fails for two reasons. First, the recognition of Rulership by the President does not, as far as the President is concerned, touch any of the private properties claimed. Secondly, the petitioner does not possess any private property which has been effected by the act of

recognition of Rulership. It must be stated here that as far as the right to privy purse of a Ruler is concerned, Article 291 of the Constitution enacts that payment of any sum which has been guaranteed to any Ruler of a State as a privy purse supCI/70-10 shall be charged on and paid out of the consolidated fund of India. The privy purse is not an item of private property to which the Ruler succeeds. Counsel for the petitioner also realised the effect of Article 291 and did not press the contention of privy purse being a private property. The next question for consideration is whether the President has power to recognise a Ruler. Counsel on behalf of the petitioner contended that clause (22) of Article 366 of the Constitution was a mere definition and did not confer any right on the President to recognise a Ruler. This contention is not correct. In the first place, if it be said that clause (22) of Article 366 does not empower the President to recognise a Ruler clause (22) will be robbed of its real content and the definition will be bereft of the core for which the definition is enacted. Secondly, clause (22) of Article 366 of the Constituion is the only Article in the Constitution which speaks of recognition of Rulership. To suggest that clause (22) does not contain any power will mean that the clause is empty and is devoid of the very purpose for which the definition is enacted. Thirdly, the most significant words in clause (22) of Article 366 are "for the time being is recognised by the President", not only in relation to a Ruler but also in relation to a successor of such Ruler. The words "is recognised by the President" indicate beyond any doubt that the power of the President to recognise a Ruler is embedded and inherent in the clause itself. Again, the words "for the time being" indicate that the President has power not only to recognise but also to withdraw recognition whenever occasion arises.

It was said by counsel for the petitioner that Article XIV of the Covenant which the late Ruler entered into with the United State of Rajasthan guaranteed succession and, therefore, the petitioner had a fundamental right to claim succession according to personal law. With the coming into effect of the Constitution the States ceased to exist as separate entities. The Covenants also ceased to be effective after the enactment of the Constitution in so far as he Covenants were inconsistent with the Constitution. The meaning of Article XIV of the Covenant is that the claim to succession on the basis of custom and law is preserved. Article XIV of the Covenant by itself is not evidence of any custom or law. If the petitioner relied on Article XIV, the petitioner has to establish such right based on custom or law before the appropriate authority. Whatever rights the petitioner asserted in regard to succession were the subject matter of enquiry by the Committee which was constituted by the President to enquire into the rival claims to recognition of Rulership. The petitioner appeared before the Committee and preferred claims. The Committee was constituted to examine the contentions of rival claimants. The Committee gave its report as to who was best entitled to recognition by the President. It was entirely a matter within the pro-

vince of the President to recognise a Ruler. The power to recognise a Ruler which is conferred on the President by the Constitution cannot be challenged on the ground that the power is unguided. The President exercised the power by appointing a Committee to examine the rival claims. The recognition of Rulership is one of personal status. It cannot be, said that claim to recognition of Rulership is either purely a matter of inheritance or a matter of descent by devolution. Nor can claim to recognition of Rulership be based only on covenants and treaties. That is why Article 363 of the Constitution constitutes a bar to interference by Courts in a dispute arising out of treaties and agreements. No claim to recognition of Rulership by virtue of a Covenant is justiciable in a Court of

law. The Constitution,, therefore, provided for the act of recognition of the Rulership by the President as a political power. It has to be recognised that the right to private properties of the Ruler is not embraced within clause (22) of Article 366 of the Constitution which speaks of recognition of a Ruler by the President.

Counsel on behalf of the petitioner contended that the recognition of a Ruler itself instantaneously invested the Ruler with property and that Rulership and property were blended together. An illustration of combination of office and property in the case of Mathadhapati was cited as an analogy. The property is an appendage to the office in the case of Maths. The example of the office of a trustee furnishes the answer where office and properties are vested in the trustee. It cannot be said that recognition of Rulership is bound up with recognition of private properties of the Ruler because the former is within the political power of the President and the latter is governed by the personal law of succession. Recognition of Rulership by the President is not recognising any right to private properties of the Ruler because recognition of Rulership is an exercise of the political power of the President. The distinction between recognition of Rulership and succession to private properties of the Ruler has to be kept in the forefront. The rights to private properties of Rulers are not the matters of recognition of Rulership. The recognition of Rulership is not an indicia of property but it entitles the Ruler to the enjoyment of the Privy Purse contemplated in Article 291 and the personal rights, privileges and dignities of the Ruler of an Indian State mentioned in Article 362 of the Constitution. Therefore, recognition of Rulership is not a deprivation of right to property. If the petitioner has any claim to any private property said to belong to the last Ruler, the petitioner has not established any such claim in any court of law. It was said on behalf of the petitioner that the Ruler after recognition by the President came to Possess private properties said to belong to the last Ruler. If the petitioner has any competing rights with the Ruler in relation to such private properties such a claim is neither a fundamental right nor is it comprised in the act of recognition of a Ruler by the President.

For these reasons, we are of opinion that the contentions of the petitioner fail. The petition and the appeal are both dismissed with one set of costs.

V.P.S.

Petition and Appeal dismissed.