

## **Jiwan Nath Zutshi And Ors. vs State Of Madhya Pradesh on 5 January, 1971**

**Equivalent citations: AIR1971SC744, (1972)4SCC75, 1971(III)UJ136(SC), AIR 1971 SUPREME COURT 744, 1972 4 SCC 75, 1973 JABLJ 1038, 1971 MAH LJ 527, 1971 MPLJ 596, 1971 U J (SC) 136**

**Bench: J.C. Shah, A.N. Grover, K.S. Hegde**

### **JUDGMENT**

K.S. Hegde-J.

1. This is an appeal by special leave. It is brought by the legal representatives of one Dewan Bahadur Brij Mohan Zutshi who was the Dewan of Ratlam State from 1912 to 1929. The appellants sued the State of Madhya Pradesh for a declaration of their title to the suit lands. Their suit was decreed by the trial Court but in appeal the same was dismissed and the judgment of the first appellate Court was affirmed by the High Court.

2. The appellants' case is that the Maharaja of Ratlam announced the grant of suit lands to Zutshi in appreciation of the service rendered by him but no written order was issued. After the death of the previous Maharaja, the succeeding Maharaja after making the necessary enquiries and going through the records ordered on May 10, 1943:

Made inquiries felt that for all practical purposes a grant had been made to Dewan Bahadur and what was left was the mere formality of a patta which had evidently been held until certain construction work was complete.

3. But before he made this order he had already signed the merger agreement. Curiously enough on May 11, 1948, a day after he made the order earlier referred to, he passed the following order:

My attention has been drawn to the fact that some of the orders which I may have passed after the signing of the covenant on the 22nd April 1948 might be embarrassing to the successor Government and that they may not feel justified in honouring them. I have therefore authorised Mr. Sharma" (his Dewan") to review all such orders and to refer them to the Regional Commissioner for approval. Pending such approval all such orders will be held up to enable Mr. Sharma to scrutinize them.

4. In view of this order the order made on May 10, 1948 approving the alleged grant in favour of Zutshi was held up. The regional Commissioner did not accord his approval for the grant. Mr. Zutshi died in 1950. The suit from which this appeal arises was instituted on January 25, 1960.

5. The main evidence relied on in favour of the alleged grant is the order made by the Maharaja on May 10, 1948. The oral evidence adduced in support of the alleged grant has not been accepted either by the first appellate Court or by the High Court. Not much importance can be attached to the order made by the Maharaja on May 10, 1948 in view of his order of May 11, 1948.

6. Even if we assume that the Maharaja had made a Grant on May 10, 1948, the same having not been accepted by the successor Government, the claim made is unenforceable in law-See State of Gujarat v. Vora Fiddali Badruddin Mithibarwala:

7. Admittedly Zutshi did not come into possession of the suit lands in pursuance of the alleged grant in 1924. The evidence relating to that grant has not been accepted by the first appellate Court as well as by the High Court.

8. In the result this appeal fails and the same is dismissed. But in the circumstances of the case we make no order as to costs in this appeal.