Supreme Court of India
Sardar Govindrao & Ors vs State Of Madhya Pradesh & Ors on 7 May, 1982
Equivalent citations: 1982 AIR 1201, 1982 SCR (3) 729
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
SARDAR GOVINDRAO & ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT07/05/1982

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
DESAI, D.A.
ISLAM, BAHARUL (J)

CITATION:
1982 AIR 1201 1982 SCR (3) 729
1982 SCC (2) 414

ACT:
Central Provinces & Berar Revocation of Land Revenue Exemptions Act 1948-Section 5(3) (ii)-Grant of money or pension-Persons entitled to-Burden of proving that they were descendants of a Ruling Chief-Rests upon claimants.
International law-Cession-Under treaty-Rights of inhabitants-How acquired.
Words and phrases:-Ruling Chief-Sovereignty-Meaning of

HEADNOTE:
In consideration of the loyal services rendered by them, two remote ancestors of the appellants received in 1751 a sanad from the Peshwa Balaji Rao by which they were conferred the title of "Bhuskute" and were made sur mandloi and sur kanungo. They were created watandars with the reservation of sur deshmukhi in respect of certain mahals in Sarkar Handia and in Sarkar Bijagarh, rent-free in perpetuity with right to retain 4% of the revenue. They remained the Amils or Governors of the Peshwa at Handia till 1768 A.D. In the mean-time they were granted inams of certain villages.
After the defeat of the Maharatta army in the third battle of Panipat in 1761 A.D. the appellants ancestors lost

their position and power as sur mandloi and sur kanungo in Sarkar Handia. By the sanad of 1777 the Peshwa created them the Jagirdar of Timarni comprising of Timarni and four other villages together with the fort with sur deshmukhi in perpetuity. The sanad of 1798 permitted them to maintain irregular soldiery for recovery of taxes and cesses. The grant of jagir was later confirmed by the Scindias and this was continued by the British.

After the Scindias ceded the territory in question to the British in 1860, the British Government undertook to recognise and respect the existing rights and titles of its new subjects to their lands.

After a full investigation into the nature of the estates transferred and the nature of tenures of their new subjects, the British Government declared in 1865 that except "the chief, the Chief of Makrai, all the zamindars are to be regarded and treated as ordinary British subjects". The estates in question, which
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were located in the districts of Hoshangabad and Nimar, were held by the appellants on favourable terms as Jagirdars, Muafidars and Ubaridara in which they enjoyed exemption from payment of land revenue amounting to Rs. 27,895 per annum.

Having found that there was no justification for continuing the exemption from liability to pay land revenue hitherto enjoyed by certain families in the former province of Central Provinces and Berar, and also because it resulted in loss to the public exchequer, the provincial legislature passed the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948 by which all prevalent exemptions from liability to pay land revenue were revoked.

In their application under section 5(3) (ii) of the Act the appellants claimed that the "Bhuskute" family of Timarni, to which they belonged, were the descendants of a former ruling chief and in that capacity they were entitled to a substantial grant of money or pension for maintenance in terms of section 5 (3) (ii).

Rejecting their application the State Government held that the ancestors of the appellants were no more than the watandars of a small territory under the Peshwas and later under the Scindias and with the transfer of sovereignty to the British they lost their administrative power and retained only their muafi. It accordingly, held that the appellants were not the decendants of a former Ruling Chief and so were not entitled to the grant of any amount or pension in terms of section 5(3) (ii) of the Act.

The High Court declined to intervene with the order of the State Government on the ground that the appellants never enjoyed any status higher than that of a Jagirdar.

Dismissing the appeal,

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HELD: Not being the descendants of a former Ruling Chief, the appellants were not entitled to any money or

pension in terms of section 5 (3) (ii) of Central Provinces and Land Revocation of Land Revenue Act, 1948. [754 D]

It does not appear from the impugned order of the State Government that there was any error of jurisdiction in refusing to grant money or pension to the appellants under section 5 (3) (ii) of the Act or any incorrect determination of the basic facts on their part in reaching the conclusion that their ancestors never exercised sovereign powers of a Ruling Chief in relation to the jagirs of Timarni granted by the Peshwas and later confirmed by the Scindias and continued by the British at the request of the Scindias. [738 H; 739 A-C]

The expression "Ruling Chief" has not been defined in the Act and must be understood as the term is understood in common parlance. Normally it connotes "a person who is endowed with the content of sovereignty and also has the attributes of a sovereign". Sovereignty, according to its normal legal conno-
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tation, is the supreme power which governs the body politic, or society which constitutes the State, and this power is independent of the particular form of Government, whether monarchial autocratic or democratic. [736 E; 737 A-C]

After a sovereign State has acquired territory, either by conquest or by cession under treaty or by the occupation of territory theretofore unoccupied by the recognised Ruler or otherwise, an inhabitant of a territory can enforce in the municipal courts only such proprietary rights as the sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights, that gives them no right which they can so enforce. The meaning of a general statement in a proclamation or a treaty that existing rights would be recognised is that the Government will recognise such rights as upon investigation it finds existed. The Government does not thereby renounce its right to recognise only such titles as it considers should be recognised nor confer upon the municipal courts any powers to adjudicate in the matter. [747 H; 748 A-C]

Vajesingji Joravarsingji & Ors. v. Secretary of State for India in Council L.R. [1923-24] 51 IA 357; and Bir Bikram Deo v. Secretary of State for India in Council, L.R. [1911-12]39 IA 31; and Martand Rao v. Malhar Rao, L.R . [1927-28] 55 IA 45, relied on.

Kunwarlal Singh v. Provincial Government, Central Provinces and Berar. I.L.R. [1944] Nagpur 181, referred to.

The burden of proving that after cession of the territory by the Scindias to the British by the treaty of 1860, the British Government acknowledged or recognised the existence of any sovereign rights with the ancestors of the appellants, was upon them and that burden they have failed to discharge. On the contrary, the British Government decided on the basis of the enquiry that the Zamindars in

the Central Provinces including those of the appellants' ancestors, had to be regarded and treated as ordinary British subjects. [749 B, C]

Viewed in the historical perspective the appellants pretensions that their ancestors acquired attributes of sovereignty in relation to the jagir of Timarni can hardly stand scrutiny. The tenor of all the sanads granted to the ancestors of the appellants shows that they were nothing more than Jagirdars of Timarni and that they had never attained the status of a feudatory or tributary Ruling Chief under the sovereignty of the Peshwas or the Scindias. The British Government never recognised the appellants' ancestors who like all other Zamindars and Jagirdars in the Central Provinces, were laying claim to be recognised as a chieftain to be a Ruling Chief. After the establishment of the British rule, the Governor General came to the conclusion that the ancestors of the appellants had to be regarded and treated as ordinary British subjects. [744 C; 745 F; 747 G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION; Civil Appeal No. 256 of 1971.

From the Judgment and order dated the 9th March, 1970 of the Madhya Pradesh High Court (Jabalpur) in Misc. Petition No. 61 of 1967.

V.M. Tarkunde and A. G. Ratnaparkhi for the Appellants. Gopal Subramaniam, S.A. Shroff and D.P. Mohanty for the Respondent.

The Judgment of the Court was delivered by SEN, J. This appeal by certificate is directed against the judgment and order of the Madhya Pradesh High Court dated March 10, 1970, by which the High Court declined to interfere with an order of the State Government of Madhya Pradesh dated September 9, 1966 disallowing the appellant's claim to the grant of money or pension under cl. (ii) of sub-s. (3) of s. 5 of the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948 (for short 'the Act') on the ground that they are not entitled to the grant of such money or pension not being 'the descendants of a former Ruling Chief' in terms thereof.

After the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948 was brought into force, the appellants who held estates in the districts of Hoshangabad and Nimar on favourable terms as Jagirdar's Muafidars and Ubaridars enjoyed exemption from payment of land revenue amounting to an aggregate of Rs. 27,895.05p. per annum, made applications to the Deputy Commissioners of Hoshangabad and Nimar claiming that the members of the Bhuskute family of Timarni to which they belonged were the descendants of a former Ruling Chief and therefore were entitled to a substantial grant of money or pension for their suitable maintenance in terms of cl. (ii) of sub-s. (3) of s. 5 of the Act. It was alleged that although their ancestors had acquired the rights of

a Ruling Chief by virtue of the sanads granted by the Peshwas and recognized by the Scindias and were all along treated as such even by the British, they were wrongly recorded as Jagirdars of Timarni in the record of rights which was no evidence of their real status. The applications were forwarded by the respective Deputy Commissioners to the State Government of Madhya Pradesh. The State Government, by its order dated May 13, 1955, rejected their prayer holding that they were not entitled to the grant of such amount or pension not being the descendants of a former Ruling Chief within the meaning of cl. (ii) of sub-s. (3) of s. 5 of the Act. A Full Bench of the Madhya Pradesh High Court by its judgment dated April 20, 1959 declined to interfere on the ground that the proceedings under sub-s. (3) of s. 5 of the Act could not be said to be judicial or quasi-judicial in nature as the use of the word "may" in sub-s. (3) of s. 5 of the Act made the grant of money or pension in the discretion of the State Government. Disagreeing with the High Court, this Court in Sardar Govindrao & Ors. v. The State of Madhya Pradesh(1) held that the word "may" used in sub-s. (3) of s. 5 must, in the context, be construed to have a compulsive force and therefore on the existence of the condition precedent, the grant of money or pension became obligatory on the Government notwithstanding that in sub-s. (2) the Government had power to pass such orders as it thought fit. It observed that in passing orders on the applications made by the appellants the State Government had to act in a quasi- judicial manner. The appellants therefore had to be given an opportunity to state their case and were also entitled to know why their claim had been rejected.

In compliance with the directions issued by this Court in Govindrao's case, supra, the State Government afforded the appellants an opportunity of hearing on August 6, 1966 to substantiate their claim for grant of money or pension under cl. (ii) of sub-s. (3) of s. 5 of the Act on the ground that they were the descendants of a former Ruling Chief in terms of the section. The State Government in the impugned order specifically mentions that 'the appellants mainly based their claim only on the sanad issued during the regime of Chhatrapati Shahu in 1777 A.D.", that is, granted by the Peshwa Madhavrao by which their ancestor Ramchandra Bullal was granted the jagir of Timarni. On a construction of the document, the State Government held that the sanad did not confer on the grantee the powers of a Ruling Chief. It observed that the later grants by the Peshwas referred to the ancestors of the appellants as sur-mandloi and sur- kanungo and not as a Ruling Chief and the grants were in the nature of inams being emoluments appurtenant to their office. It further held that even after the suzerainty had passed from the Peshwas to the Scindias, the grant of village Piplia and Bhaili to their ancestors by Daulatrao Scindia by the two sanads of 1802 and 1804 referred to them as sur-mandloi and sur-kanungo and not as a Ruling Chief, and they were conferred no rights except that of a mere inamdar. During the period of management of the tract by the British on behalf of the Scindias from the years 1844 to 1860, the jagir was continued as a muafi in perpetuity at the desire of the Scindias. As regards the period after the transfer of suzerainty the British never recognized the ancestors of the appellants to be a Ruling Chief. In coming to that conclusion, it relied upon the decision of the Governor General in Council conveyed by the letter of the Secretary to the Chief Commissioner of Central Provinces dated March 3, 1865. The State Government taking into consideration all these circumstances held that the ancestors of the appellants were no more than the watandars of small territory under the Peshwas and later under the Scindias and with the transfer of sovereignty to the British, they lost their administrative powers and retained only their muafi. The State Government accordingly held that the appellants were not the descendants of a former Ruling Chief and therefore were not entitled to the grant of any amount

or pension under cl. (ii) of sub-s. (3) of s. 5 of the Act.

On a consideration of the material on record, the High Court came to the conclusion that there was no error apparent on the record to warrant interference with impugned order of the State Government. According to the High Court, cl. (ii) of sub-s. (3) of s. 5 of the Act authorized the State Government to grant money or pension to those families alone whose ancestors had been granted remissions in land revenue, not on account of any services rendered by them but in consideration of the fact that they were deprived of their sovereign powers. It referred to the existence of a feudal system known as the jagirdari system, prevalent in the erst-while State of Gwalior, which was a legacy of the past, under which the land revenue of a territory was assigned to a chief or a noble, known as the jagirdar, to support troops, police and for specified services.(1) It observed that the Legislature has kept the distinction in view while enacting cl. (ii) of sub-s. (3) of s. 5 of the Act. After referring to the material on record, it came to the same conclusion as the State Government and held that the ancestors of the appellants never enjoyed the powers of a tributary or feudatory chief under the Peshwas or the Scindias that they held status of sur-mandloi and sur-kanungo and were holding the lands muafi in perpetuity, being in the nature of service grant. The conferral of rights in them by the Peshwas in favour of a loyal servant and instead of making a cash grant for the services rendered, they were permitted to collect their remuneration from a part of the revenue and maintain themselves from the profits derived from the lands appurtenant to their office. It would thus appear that both the High Court as well as the State Government were of the view that the appellants never enjoyed any status higher than that of a jagirdar.

The whole object and purpose of the legislation, as reflected in the Preamble, is to revoke all prevalent exemptions from liability to pay land revenue. The Legislature felt that there was no justification for continuing the exemption from liability to pay land revenue hitherto enjoyed causing loss to the public exchequer. Except grants for specific purposes, the exemptions were mostly in consideration of loyalty and help rendered in the past and there was no reason why they should be allowed to be continued at present and cause unavoidable loss to the Revenue. Where such exemptions were granted for services and it was considered that the services should continue, or where it was considered necessary to continue in individual cases, certain grants made in the past, provision has been made to do so by the award of money grants and pensions. Sub-s. (1) of s. 3 provides:

> "3. (1) Every estate, mahal, village or land to whatever purpose applied and wherever situate, which was heretofore exempted from payment of the whole or part of land revenue by special grant of, or contract with the Crown, or under the provision of any law or rule for the time being in force or in pursuance of any other instrument, shall, notwithstanding anything contained in any such grant, contract, law, rule or instrument, be liable from the agricultural year 1948-
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> 49.
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> (i) In the Central Provinces to the payment of land revenue equal to the amount of Kamil-Jama as revised by the Central Provinces Revision of the Land Revenue of

> Estates Act, 1947, or by the Central Provinces Revision of the Land Revenue of Mahals Act, 1947, as the case may be."

The Legislature however thought it fit to mitigate the rigour in certain specific cases by making a provision in sub-s. (1) of s. 5 that any person adversely affected by the provisions of s. 3 may apply to the Deputy Commissioner of the district for the award of a grant of money or pension, and sub-s. (2) thereof provides that the Deputy Commissioner shall forward the application to the State Government, which may pass such orders as it deems fit. Sub-s. (3) of s. 5 of the Act provides:

> "5 (3) The State Government may make a grant of money or pension:-
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> (i) for the maintenance or upkeep of any religious, charitable or public institution or service of a like nature, or,
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> (ii) for a suitable maintenance of any family of a descendant from a former Ruling Chief."

In sub-s. (4) of s. 5 of the Act, any amount sanctioned by way of grant of money or pension under this section shall be a charge on the revenue of the State.

The expression "Ruling Chief" has not been defined in the Act and must therefore be understood as in common parlance. The meaning of the word "Ruler" as given in Shorter Oxford English Dictionary, 3rd edn., vol. 2, p. 1867 is: "one who, or that which, exercises rule, especially of supreme or sovereign kind". Normally the expression "Ruling Chief" connotes "a person who is endowed with the content of sovereignty and also has the attributes of a sovereign". According to Blacks' Legal Dictionary, 5th edn., p. 1252 the legal conception of "sovereignty" is stated thus:

> "The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority, paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent."

"Sovereignty" means "supremacy in respect of power, dominion or rank; supreme dominion authority or rule". "Sovereignty" is the right to govern. The term "sovereignty" as applied to states implies "supreme, absolute, uncontrollable power by which any state is governed, and which resides within itself, whether residing in a single individual or a number of individuals, or in the whole body of the people." Thus, sovereignty, according to its normal legal connotation, is the supreme power which governs the body politic, or society which constitutes the state, and this power is independent of the particular form of government, whether monarchial, autocratic or democratic.

According to Laski in "A Grammar of Politics", 1957 Reprint Chap. II, p. 50 "The legal aspect of sovereignty is best examined by a statement of the form given to it by John Austin. In every legal analysis of the State, he argued, it is first of all necessary to discover in the given society that definite superior to which habitual obedience is rendered by the mass of men. That superior must not itself obey any higher authority. When we discover the authority which gives commands habitually obeyed, itself not receiving them, we have the sovereign power in the State. In an independent political community that sovereign is determinate and absolute. Its will is illimitable because, if it could not be constrained to act, it would cease to be supreme, since it would then be subject to the constraining power. Its will is indivisible because, if power over certain functions or persons is absolutely and irrevocably entrusted to a given body, the sovereign then ceases to enjoy universal supremacy and therefore ceases by definition to be sovereign."

It is not necessary to enter into the concept of sovereignty, one of the most controversial ideas in political science and international law, which is closely related to the difficult concepts of State and Government, of independence and democracy, except to touch upon the juristic character of the Indian State to discern the necessary attributes of sovereignty. The Indian States were neither independent nor sovereign but subject to the paramountcy of the British Crown. Sir William Lee Warner, the acknowledged authority on Indian States, in his work "The Native States of India; 1910"

characterizes them as "semi-sovereign". There is no question that there was a paramount power in the British Crown, but perhaps it is better understood and not explained. The indivisibility of the sovereignty on which Austin insists, did not belong to the Indian system of sovereign states.

The degree of sovereignty exercised by the different rulers varied greatly as the areas under their dominion. The greater princes administered the internal affairs of their states with almost complete independence, having revenues and armies of their own, and the power of life and death over their subjects. At the other end of the scale were petty chiefs with a jurisdiction hardly higher than that of an ordinary magistrate and between these extremes lay much gradation. The authority of each ruler was determined by treaties or engagements with the British Government or by practice that had grown up in the course of their relations with British India. The paramount power was with the British Crown and it had never parted with any of its prerogatives. As Sir Henry Maine said:

> "There may be found in India every shade and variety of sovereignty, but there is only one independent sovereign, the British Government. ...The mode or degree in which sovereignty is distributed between the British Government and any Native State is always a question of fact which has to be separately decided in each case, and to which no general rules apply."

After the constitution of the Central Provinces in 1861 A.D., fifteen of the Zamindaris were considered to be of sufficient importance to warrant their being constituted Feudatory States. They were: Nandgaon, Korea, Bastar, Raigarh, Sarguja, Khairagarh, Kanker, Jashpur, Kawardha, Sarangarh, Udaipur, Sakti, Chhuikadan, Makrai and Changbhakar. These fifteen Feudatory States are specified in the First Schedule to the Government of India Act, 1935. Timarni was not so listed in the First Schedule as it was a Jagir and not a Feudatory State.

The cardinal question on which the decision of the appeal must turn is whether the appellants are the descendants of a former Ruling Chief within the meaning of cl. (ii) of sub-s. (3) of s. 5 of the Act and are therefore entitled to the grant of money or pension in terms of the section. That depends on whether the ancestors of the appellants had acquired the attributes of sovereignty in relation to the jagir of Timarni granted by the Peshwa Madhavrao to two of their ancestors Naroo Bullal and his brother Ramchandra Bullal's grandson Madhav Rao in 1717 A.D. As hereinbefore adumbrated, the appellants rested their case before the State Government on the sanad of the Peshwa in 1777 A.D. in respect of the jagir of Timarni. It does not appear from the impugned order of the State Government that there is any error of jurisdiction in refusing to grant money or pension to the appellants under cl. (ii) of sub-s. (3) of s. 5 of the Act or any incorrect determination of the basic facts on their part in reaching the conclusion that the appellants' ancestors never exercised sovereign powers of a Ruling Chief in relation to the jagir of Timarni granted by the Peshwas and later confirmed by the Scindias and continued by the British at the request of the Scindias.

There can be no doubt that the ancestors of the appellants exercised considerable power and authority in the Narbada Valley at a certain period of time. The description of the family as extracted from the Hoshangabad Gazetteer, 1908, at pp. 97-98, reads:

> "The most important Brahman family is that of the Bhuskute, who hold the Timarni Estate as well as considerable property in the Nimar District and in Holkar's territory. The family is about 150 years old and originally came from the Ratnagiri District in the Bombay Presidency. Its founders were the two brothers, Ramchandra Ballal and Naro Ballal, who five generations ago, took service under the Peshwas. The brothers subjugated the country west of the Ganjal, which was then called the Handia Sarkar, and forced the Makrai Raja to surrender half his territory. The sternness with which they repressed the wasting raids of the aboriginal tribes, earned them the name of Bhuskute, or "Chopper". Kurhade or axemen, is another name by which the family is sometimes known, and the axes which are said to have been the instruments of execution are still preserved at Khargaon and duly worshipped at the Dasahra festival by the Bhuskute and their retainers. In reward for these services the brothers received in 1751 the hereditary offices of Sir Mandloi and Sir Kanungo in the Sarkars of Bijagarh and Handia, with villages and tracts of land rent-free, percentages on the revenue, and rights of taxation. The Bhuskute proved as successful in peace as they had been in war, keeping the country in order, and settling cultivators from Khandesh in the uninhabited parts. In 1777, the Peshwa Madho Rao gave them the fort of Timarni as a permanent jagir. Dault Rao Sindhia subsequently added two neighbouring villages and two more were acquired either by force or gift from the Raja or Makrai, the five villages forming a semi-independent jagir. Until the thirty years' settlement, the kiledar or "holder of the fort" at Timarni exercised jurisdiction in civil, criminal, revenue and other petty cases. These powers were withdrawn at settlement, but the estate continued to be held in jagir until the settlement of 1891-96, when the villages were registered as muafi or revenue-free, though the honorary title of jagirdar was still allowed to be retained."

The history of the matter goes to the middle of the 18th century. In 1742 A.D., the Peshwa Balaji Bajirao invaded the ancient kingdom of Garha-Mandla and exacted the tribute of chauth or one-fourth of the revenue, amounting to 4 lakhs of rupees. He took the fort and killed the Ruler of Garha-Mandla. From this time the Mandla kingdom lay at the mercy of the Marahtas. The Peshwa marched up the valley on his way from Burhanpur to attack Mandla and subdued Handia Paragana. The predatory Maratha troops plundered, burnt and looted the entire Narbada valley. Col. Sir W.H. Sleeman remarks that:

> "By this dreadful invasion of the Peshwa with his host of followers, the whole country east of Jubbulpur was made waste and de-populate."

The Mughal power was effectively driven out and we hear no more of a Muhammadan Governor of Harda Handia; but his place was taken by the two brothers Naroo Bullal and Ramchandra Bullal, who were left by the Peshwa in charge of the Handia Sarkar, which had been rendered desolate in consequence of the inroads of marauders and dacoits and were abounding in dense thick jungles. They were the Amils of the Peshwa and held the Harda Handia tract on Amanat system remitting to the headquarters the whole collection, minus expenditure. It seems that they picked up a quarrel with the Ruler of Makrai and as he was unable to make any resistance they forced him to sign a treaty in 1750 A.D. giving up half his dominion.(1) They appeared to have done loyal and good services to the Peshwa by their administrative abilities in keeping the territory in good order and in settling cultivators from Khandesh in the uninhabited parts by clearing the jungles.

In reward for their loyal services, the two brothers, Naroo Bullal and Ramchandra Bullal, received in 1751 A.D. a sanad from the Peshwa Balaji Bajirao by which they were conferred the title of "Bhuskute" and were made sur-mandloi and sur-kanungo. They were created watandars with the reservation of sur-deshmukhi in respect of 22 mahals in Sarkar Handia rent-free in perpetuity with right to retain 4% of the revenue: 2.5% on account of sur-mandloi-ship and 1.5% on account of sur-kanungoship, and rights of taxation etc. By a separate sanad of 1751 A.D. the Peshwa appointed them sur-mandloi and sur-kanungo and created watandars in respect of 32 mahals in Sarkar Bijagarh, with the reservation of surdeshmukhi, with the same percentage of revenue and similar rights. They appeared to have done good service to the Peshwas not only in shearing Ruler of Makrai but in keeping the country in good order and in settling cultivators from Khandesh in the uninhabited parts. Both these sanads show that the Peshwa made the grants in recognition of their loyal services. The documents contain a recital more or less to the effect that:

> "The two brothers presented themselves at the court of the Peshwa and petitioned for grant of watans as a reward as they had by their military skill and courage and also by their administrative abilities cleared these tracts which had been rendered desolate in consequence of in roads of marauders and dacoits and were abounding in dense thick jungles, and made them safe for habitation."

It appears that Naroo Bullal and Ramchandra Bullal remained the Amils or Governors of the Peswha at Handia till 1768 A.D. and in the meanwhile they were granted by the Peshwa Balaji Bajirao inams of villages Pokharni and Masangaon by two sanads in 1754 A.D., and similar inams of

villages Dhupkaran, Underkuch and Samarda by three sanads of 1759 A.D. from out of the 431 villages surrendered by Ruler of Makrai.

There was a twilight zone after 1750 A.D. and very little is known about the Harda Handia tract. It will presently be seen that the sanad of 1777 A.D. granted by Peshwa Madhavrao and the subsequent sanads of 1798 and 1800 A.D. granted by Peshwa Bajirao II on which the appellants strongly rely are of little or no assistance as by then the supremacy of the Peshwa over the Narbada valley was on the decline.

It appears that the Narbada valley had gone out of the control of the Peshwas by 1797 A.D. With the fluctuating fortunes of the Peshwas the ancestors of the appellants were virtually denuded of all their powers. The annihilation of the Maratha army at the hands of Ahmed Shah Durrani in the third battle of Panipat in 1761, followed by the premature death of the Peshwa Balaji Bajirao in the same year seemed to foreshadow the immediate dissolution of the Maratha empire. There followed a sudden revolt against the Maratha domination everywhere in Hindustan. The eclipse of the Maratha power naturally cast its shadow on the Harda Handia tract; and the Ruler of Makrai thought to improve the occasion by driving out the Amils of the Peshwa out of Handia, but he was himself repulsed and killed by a force of Goshains.

In or about 1750 A.D. Raghuji Bhonsle of Nagpur overran the whole range of hills from Gawilgarh to Mahadeo, and reduced the country east of Handia and south of the Narbada except the portion held by Bhopal. Hostilities between the Bhopal and Nagpur rulers commenced in 1795 and lasted with little intermission for twenty years. Hoshangabad was in that year taken by the Nagpur troops, but was retaken in 1802 by Wazir Muhamad, the celebrated minister of Bhopal. The Bhopal dominions north of the Narbada were finally lost to the Marathas in 1808. During these wars the Pindaris, first summoned by Wazir Muhammad to his assistance, but afterwards deserting to his enemies, plundered the country impartially in all directions. It is estimated that not a single village escaped being burnt once or twice during the fifteen years for which their depredations lasted, and the greater part of Sarkar Handia was entirely depopulated. The Pindaris were extirpated in 1817; and in 1818 the portions of the district belonging to the Nagpur kingdom were ceded, under an agreement subsequently confirmed by the treaty of 1826. In 1844 the Harda Hadia tract was made over by the Scindia in part payment for the Gwalior Contingent, and in 1860 it was permanently transferred and became British territory:

After the crushing defeat of the Maratha army by Ahmed Shah Durrani in the third battle of Panipat in 1761 A. D. the Peshwas never crossed the Narbada valley. There was an intense struggle between Mahadji Scindia and Jaswantrao Holkar to gain control over the valley. In Central India, these two military leaders alternately held the pre- eminency. Mahadji Scindia utilised the fiction of his sovereignty created by the Treaty of Salbai in 1781 A.D. to gain his supremacy. By 1792 A.D. he had established his ascendancy and his power in Northern India reached its meridian splendour.

During this turbulant period, the Harda Handia tract passed through several hands. There is not much history attaching to it. It appears that between 1769 and 1782 A.D., Rudraji Khunderao was the Amil or Governor of the Harda Handia tract. Between 1782 and 1789 A.D. he was succeeded in

that office by Unna Sahib. From 1790 to 1796 A.D. Daulatrao Scindia made his servant Jaswantrao Sewajee the Amil or Kamavisdar of the Harda Handia tract. It appears that the Peshwas were successful in installing the appellants' ancestor Krishna Rao Ramchandra as his Amil from 1797 to 1799 A.D., but there was a break in 1800 A.D. In 1800 A.D., Balaji Chimanjee was the Governor. Between 1801 A.D. and 1802 A.D., the Scindia's servant Jaswant rao Sewajee again became his Governor. The reason for the change is apparent. In 1801 A.D. Jaswantrao Holkar appears to have burnt and plundered Harda but in 1803 A.D. Daulatrao Scindia halted at Handia for the whole rainy season. In the same year i.e. in 1803 A.D. the territory was ceded by the Peshwa to the Scindia and called by him as the Panch Mahal.

Viewed in this historical perspective, the appellants' pretensions that their ancestors acquired the attributes of sovereignty in relation to the Jagir of Timarni, can hardly be accepted. It appears that the two of the ancestors of the appellants Naroo Bullal and his brother Ramchandra Bullal's grandson Madhavrao presented themselves at the court of the Peshwa Madhavrao after having lost their position and power as sur-mandloi and sur-kanungo in Sarkar Handia and the Peshwa by the sanad of 1777 A.D. created them the Jagirdar of Timarni with permission to keep their gadhi at Timarni. It recites that the Peshwas being pleased with their loyal services had granted to them watans in Handia Sarkar and that they had renovated the gadhi i.e. fort at Timarni which was lying in a dilapidated state, and it was felt that there should be strong fortress for their use as a residence and therefore they were given the inam of village Timarni together with the gadhi with sur-deshmukhi in perpetuity. As already stated, the appellants' ancestor Krishnarao Ramachandra became the Amil or Governor of the Peshwa between 1797 and 1799 but he was again replaced by Daulatrao Scindia's servant Jaswantrao Sewajee from 1801 to 1802. Thereafter, the Harda Handia passed under the control of the Scindias.

Much stress is however laid on the two sanads of 1798 1800 A.D. issued by the Peshwa Bajirao II for the submission that the ancestors of the appellants as Jagirdars of Timarni had acquired the status of a feudatory chief in relation thereto. We are afraid the contention cannot be accepted. By 1797 A.D. the Scindias had made an inroad into the Harda Handia tract and evidently the appellants" ancestors found it difficult to administer the territory. The sanad of 1798 A.D. issued by the Peshwa Bajirao II permitted them to maintain Shibandi irregular soldiery, and sipahis equipped with chapdas (breast plates) armed with weapons for making recovery of taxes and cesses, but the grant was with the condition that in both the mahals the irregular soldiery in any case should not exceed 100 in number without permission. This only showed the grant of permission to keep a chowkidari force for collection of revenue. The subsequent sanad of 1800 A.D. contains a recital that the ancestors of the appellants presented themselves at the court of the Peshwa Bajirao II and complained that the Scindia had deployed his own officers in Sarkar Handia and created several muafidars, inamdars and saranjamis who were creating obstructions to the enjoyment of their rights and on their protest they had been ordered to get a confirmatory letter from the Peshwa.

After the sovereignty had passed to the Scindias, Daulatrao Scindia by the two sanads of 1802 and 1804 A.D. described the appellants' ancestors as sur-mandloi and sur- kanungo and granted them an inam of villages Piplia and Bhaili as Nankar by way of maintenance, in recognition of their loyal services.

The tenor of all these sanads clearly shows that the ancestors of the appellants were nothing more than the Jagirdars of Timarni comprising of Timarni and four other villages viz Piplia, Bhaili, Samarda, and Underkuch, and that they had never attained the status of a feudatory or a tributary Ruling Chief under the sovereignty of the Peshwas or the Scindias.

After the power of the Scindias was completely destroyed by the British, Daulatrao Scindia signed the treaty of Sarje Anjengaon on December 30, 1803 by which he was obliged to give up his possessions between the Jamuna and the Ganges etc. i.e. including the Harda Handia tract known as the Panch Mahals, and soon thereafter by the treaty of Burhanpur signed on February, 27, 1804 he agreed to maintain a subsidiary force of the British to be paid for out of the revenues of the territory ceded by him. In 1844 the Harda Handia tract was made over by the Scindia in part payment for the Gwalior contingent and in 1860 it was permanently transferred and became British territory.

During the period of management of the territory by the British, the jagir of Timarni held by the ancestors of the appellants was continued at the request of the Scindia as would be clear from the following letter from Secretary to the Government of North-Western Provinces to the Secretary to the Southern Board of Revenue, North-Western Provinces dated July 24, 1860, which is in these terms:

> "I am directed to acknowledge the receipt of your letter No. 564, dated the 4th instant, submitting copies of a correspondence, relative to the Temurnee Jageer, situated in the Pergunah of Harda in Hoshangabad and held by the Bhooskutta, Kishen Row Madho, with the Boards recommendation, that the Jageer may be continued rent free in perpetuity to the family of the present incumbent, in compliance with a request to that effect made by the Gwalior Durbar, by whom it was originally granted.
>
> 2. In reply I am desired to intimate that the Lieutenant Governor is of opinion that, in a matter of this kind this Government is to a certain extent bound to confirm to the wishes of Maharaja Scindia, the country in which the rent free holding is situated being not assigned and not ceded to the British.
>
> 3. As Maharaja Scindia, had expressed a wish that the Jageer of Timurnee should be continued rent free in perpetuity to the Bhooskutta and as perpetuation seems to be in accordance with the 2nd of the revised rules for Harda Handia, dated 30th May 1834. His Honour has been pleased to confirm the exemption of the Jageer in question from demand of revenue in perpetuity."

On December 12, 1860, the Scindia ceded this territory to the British Government by a treaty of which Art. 3 is as follows: "The Maharaja transfers to the British Government in full sovereignty the whole of His Highness possession in the Panch Mahals and to the south of the river Narbada also Pargana Kumghar on the Betwa river on the following conditions: (1) That for the lands transferred by His Highness, the British Government shall give in exchange lands of equal value calculated on

both sides on the present gross revenue.....(3) That each Government shall respect the conditions of existing leases until their expiry, and that in order that this may be made clear to all concerned, each Government shall give to its new subjects leases for the same terms of years and on the same conditions as those which they at present enjoy. (4) That each Government shall give to its new subjects sanads in perpetuity for the rent- free lands-the jagirs the perquisites and the hereditary claims i.e. haqs and watans) which they enjoy at present under the other Government."

After the cession of the territory by the Scindia in 1860, the Government set itself to inquire what were the estates transferred and what were the tenures of their new subjects. This was necessary, first of all, because as land of equal value elsewhere was to be ceded to the Scindia, it was necessary to note the exact value of what had been taken over, and also because undoubtedly the Government wished to give effect to the terms of the treaty above quoted and in particular to the fourth head of cl. 3. There was long and detailed inquiry by the Government as to the precise position of the Jagirdar of Timarni. The inquiry dragged on for some years, but after a full investigation the Secretary to the Chief Commissioner of the Central Provinces by his letter dated March 4, 1865 conveyed the decision of the Governor General-in-Council to the effect:

> "The Governor-General in-Council has been pleased to rule on the Chief Commissioner's recommendations that with the exception of the Chief, the Chief of Makrai, all the Zamindars are to be regarded and treated as ordinary British subject.
>
> So far as the Chief Commissioner is aware there is nothing in the past history or present circumstances of any of the Pargunna Officials or Jamindars of Nemar which would in any way be entitled to exercise their estates any degree of sovereign power."

It would thus appear that the British Government never recognised the appellants' ancestor Krishnarao Madho, who like all other Zamindars and Jagirdars in the Central Provinces, were laying claim to be recognised as a chieftain, to be a Ruling Chief.

After a sovereign state has acquired territory, either by conquest or by cession under treaty or by the occupation of territory theretofore unoccupied by the recognized Ruler or otherwise, an inhabitant of a territory can enforce in the municipal Courts only such proprietary rights as the sovereign has conferred or recognized. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights, that gives them no right which they can so enforce. The meaning of a general statement in a proclamation or a treaty that existing rights would be recognised is that the Government will recognize such rights as upon investigation it finds existed. The Government does not thereby renounce its right to recognize only such titles as it considers should be recognized nor confer upon the municipal courts any powers to adjudicate in the matter. The principle is so well-settled that it is not necessary to burden the judgment with many citations.

In Vajesingji Joravarsingji & Ors. v. Secretary of State for India in Council Lord Dunedin in a somewhat similar claim of a taluqdar of the Panch Mahals which was in the dominion of the Scindia ceded to the British Government by the treaty dated December 12, 1860, negatived the claim of the taluqdar to proprietary rights observing:

> "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, recognized. 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. This is made quite clear by Lord Atkinson when, citing the Pongoland case of Cook v. Sprigg L.R. 42 IA 229, 268 he says: "It was held that the annexation of territory made an act of state and that any obligation assured under the treaty with the ceding state either to the sovereign or the individuals is not one which municipal Courts are authorized to enforce."

The burden of proving that after cessation of the territory by the Scindias to the British by the treaty of December 12, 1860 the British Government acknowledged or recognized the existence of any sovereign rights with the ancestors of the appellants was upon them and that burden they have failed to discharge.

The historical material on which reliance is placed is not of much legal significance. In the Central Provinces, the Zamindari or Jagirdari estates had nothing to do with Revenue-farming. They were simply the estates of chiefs or barons of the old Gond kingdoms. When these kingdoms were conquered by the Marathas, the main portions became the Khalsa, or directly managed lands, of the conquerors. The old 'baronial' territories being in the hills on the outskirts of the Maratha domain, were not productive of much revenue; they were therefore let alone, the chiefs being made to pay a moderate tribute. This position was maintained under the British Government. The estates were subjected to a general kind of Revenue Settlement, which varied in form (and in degree of detail) in different districts, and according to the rank and circumstances of the chief or landlord.

The Settlement of 1863 by Sir Richard Temple, Chief Commissioner of Central Provinces recognised the Malguzars as virtually landlords. The recognition of proprietary rights was absolute and unreserved. It was not the creation of a new right, but the recognition, by the Government, of the state of things which had existed in practice. The principle so clearly established in the Settlement of 1863 was subsequently departed from and although the Malguzars were treated to be proprietors and they became mere intermediaries to whom the Government looked for collection of land revenue.

The historical material pertaining to the period from 1844 to 1860 A.D. when the Scindia had ceded the territory to the British and the period thereafter i.e. the period from 1860 till the settlement of the Hoshangabad District in 1865 is of no legal consequence. They are undoubtedly historical documents of great importance but are not sufficient to form a basis for the conclusion that the ancestors of the appellants were the Ruling Chiefs of Timarni. First of these was the letter of Lt. Col.

Sir W.H. Sleeman, Agent to the Governor General, dated June 3, 1847 treating the Jagirdar of Timarni at par with the Chief of Makrai and by which he ordered that there should not be any interference with the revenue management of the Makrai and Timarni estates and all questions relating to transfer of leases, suits for rents, ejectments etc. should be left to the Chiefs as hithertofore. This was a letter written when the territory was placed under the Deputy Commissioner of Hoshangabad subject to the control of Agent to the Governor General. Next is a letter from the Deputy Commissioner, Hoshangabad dated July 16, 1860 on a complaint by the kiledar of the Bhuskutes directing the Settlement Officer that he would cause the survey, and if any commenced, to be discontinued, "as we cannot in any way interfere with the Bhuskute Jagir". We have already referred to the important letter dated July 24, 1860 from the Secretary to the Government, North-western Provinces to the Secretary to the Southern Board of Revenue, North-Western Provinces, which brings out the real status of the ancestors of the appellants as a Jagirdar.

In Sir Richard Temple's "Report on the Zamindaris and other petty Chieftains in the Central Provinces" submitted by him to the Government of India in 1863, there is a letter by Hector Mackenzie, Secretary to the Chief Commissioner of the Central Provinces addressed to the Government of India dated October 31, 1863. He traced the history of the ancestors of the appellants and then went on to say that they ruled over the territory. We think it necessary to extract the relevant portion thereof which runs as follows:

> "The title of Bhooscutta was given by the Peshwa to officers sent to clear jungles and cultivate waste lands, and one of these the founder of the family under notice was sent to Hurda where he brought much land under cultivation, and was high officer It appears that in Peshwa's time the Bhooscutta 'ruled' in Hurdah, and when Scindia obtained possession he gave a grant of five villages, Timurni, Bhaili, Oondrakutch, Samurdha, and Tupcurn to the family in perpetuity; and until the cession of Hurdah to the British Government, the Bhooscutta was under the supervision of the Political Agent at Bhopal (Sehore) and quite independent.
>
> When Hurdah was ceded, Timurni was placed under the Deputy Commissioner of Hoshangabad, subject to the Commissioner of these territories, and the late Commissioner and Agent to the Governor General Sir W. Sleeman, ordered that the Bhooscutta should not be interfered with in any way except in heavy criminal cases and such is still the practice."

His subsequent letter to the Commissioner Saugar Division dated December 2, 1863 reads:

> "I am directed by the officiating Chief Commissioner to inform you, that the Timurnee Estate being held in Zamindaree tenure, i.e. it is a petty chieftaincy the villages comprised in it need not be measured by the settlement officer, nor should any cesses be levied. This Estate forms one of three Muckrai, Timurnee, Pitera, in your Divisions which are petty Chieftaincies and in respect of which the orders of the Government have been solicited in detail, when they are received they will be

communicated."

Then there is the letter from the Settlement Commissioner, Central Provinces to the Settlement officer, Hoshangabad dated August 4, 1865 directing him to take the necessary measures for completing the regular settlement of the Timarni jagir with all practical despatch. It was mentioned that although the jagir had been released in perpetuity, the chief object of making the assessment was to fix the Jamas on which the percentage due on account of cesses and other taxes were to be fixed. This was followed by a letter from the officiating settlement officer to the appellants' ancestor Krishnarao Madho dated August 19, 1865 informing him that there should be no apprehension about the settlement operation in progress, that the object of the Government was only to ascertain the area and capacity of the villages.

Sir Charles Elliot's Settlement Report of the Hoshangabad District of 1865 records that Naroo Bullal and Ramchandra Bullal made sur-mandloi and sur-kanungo by the Peshwa of the whole 22 paraganas of the Handia Sarkar i.e. they were paragana officials. He went on to observe that the appellants' ancestor Krishenarao Madho was a "semi-dependent" jagirdar of Timarni comprising of five villages, but-as regards rest of his holdings a service muafidar. He states that all of these villages were given to the appellants' ancestors rent- free in perpetuity to meet expenses incurred for the office of sur-mandloi and sur-kanungo which the Peshwa had bestowed on him.

After a full investigation into title, the Governor General in Council came to a decision that all Zamindars in the Central Provinces, including the ancestors of the appellants, had to be regarded and treated as ordinary British subjects.

It is abundantly clear from what has been set forth above that although the Government officials took great pains to determine what was the position of the jagirdar of Timarni, the Government ultimately came to the conclusion that he held the status of an ordinary British subject and was not a Feudatory Chief exercising any sovereign powers.

In Kunwarlal Singh v. Provincial Government, Central Provinces & Berar, similar contentions were raised. In that case, the plaintiffs who were the Zamindars of Kamtha, Wadad and Deori Kishori known as Wainganga Zamindars and that of Palasgarh governed by what was known as the Chanda Patent, challenged the validity of the Central Provinces and Berar Revision of the Land Revenue of Estates Act, 1939 which provided for an increase in the levy of tokoli as beyond the legislative competence of the then Provincial Legislature since it amounted to acquisition of land without payment of compensation. They claimed that they enjoyed sovereign or quasi-sovereign status and takoli was in the nature of a tribute. Both the contentions were rejected. It was held by Vivian Bose, J. that takoli was land revenue and that the Zamindars were nothing more than ordinary British subjects and therefore liable to pay land revenue like any other subject.

The Zamindars of Central Provinces like the appellants here had twice carried the matter right upto the Privy Council in assertion of their claim that they were Feudatory Chiefs, but the Judicial Committee classed them as ordinary British subjects. In Bir Bikram Deo v. Secretary of State for India in Council the Privy Council was dealing with the Zamindars in the Raipur District of the

Central Provinces. Their status was the same as that of the Wainganga Zamindars and they were governed by what was known as the Chanda Patent, which gave them a status higher than that of other Zamindars. In Martand Rao v. Malhar Rao, the Judicial Committee was dealing with Kampta zamindari in Waingana and the claim was that the estate was in the nature of a Raj. In both the cases, reliance was placed on certain historical material, including Sir Richard Temple's "Report on the Zamindaris and other Petty Chieftains in the Central Provinces" where he described Wainganga Zamindars governed by the Chanda Patent, generally as "Dependent Chiefs". The Judicial Committee while rejecting the contention that the zamindars were petty Chieftain having attributes of sovereignty, observed:

> "It appears, moreover, from Sir Reginald Craddock's note, that after a good deal of correspondence between Sir R. Temple, as Chief Commissioner of the Central Provinces, and the Government of India, it was finally decided that only holders of certain estates should be recognized as feudatories, and all others as ordinary subjects. Sanads were granted the former, expressly mentioning that the succession was in their case to be a single heir. That provision was omitted in the case of sanads to most Zamindars of the second class, including the Amgaon zamindar, though with regard to some others like Chanda that provision was expressly attached."

While coming to that conclusion, the Judicial Committee observed that:

> "There are passages here and there both in Sir Richard Jenkins report and Sir R. Temple's report which speaks of all these zamindaris indiscriminately as chiefs or chieftains, but that.. they could possibly be classed category of sovereign or semi-sovereign chiefs whose possessions were necessarily impartible".

In Vajesingji Joravarsingji & ors. v. Secretary of State for Indian in Council (supra), Lord Dunedin while dealing with the historical material had said:

> "The view of the officials of the Government as to that would influence them to make up their minds as to what title should be given or recognized, but even then, as far as their Lordships are concerned, it is what they did after investigation, not what they thought at investigation, that is matter of moment."

In conclusion, it must be held that the appellants were not entitled to any money or pension under cl. (ii) of sub- s. (3) of s. 5 of the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948, not being "the descendants of a former Ruling Chief" in terms of that section.

The result therefore is that appeal must fail and is dismissed with costs.

P.B.R. Appeal dismissed.