

Supreme Court of India

Thakur Bahadur Singh vs The State Of Rajasthan And Others on 17 March, 1961

Equivalent citations: 1961 AIR 1338, 1962 SCR (1) 438

Author: N R Ayyangar

Bench: Gajendragadkar, P.B., Sarkar, A.K., Wanchoo, K.N., Gupta, K.C. Das, Ayyangar, N. Rajagopala

PETITIONER:

THAKUR BAHADUR SINGH

Vs.

RESPONDENT:

THE STATE OF RAJASTHAN AND OTHERS

DATE OF JUDGMENT:

17/03/1961

BENCH:

AYYANGAR, N. RAJAGOPALA

BENCH:

AYYANGAR, N. RAJAGOPALA

GAJENDRAGADKAR, P.B.

SARKAR, A.K.

WANCHOO, K.N.

GUPTA, K.C. DAS

CITATION:

1961 AIR 1338

1962 SCR (1) 438

ACT:

Resumption of Jagirs-Extinguishment of tribute-Hukamnama, if amounts to tribute-Demand for hukamnama, if maintainable-Marwar Land Revenue Act, 1949 (Marwar 40 of 1949), ss. 185(1), 190(1)-Rajasthan Land Reforms and Resumption of jagirs Act, 1952 (Rajasthan 6 of 1952), ss. 2(r), 4(a), 8.

HEADNOTE:

The title of the petitioner to succeed to the jagir as the next heir of his father who died in July 1946 was recognised and a renewal granted in his favour by the Government by an order dated March 8, 1952. Section 190 of the Marwar Land Revenue Act, imposed an obligation on the succeeding heir to 1949, execute within one month of the communication to him of the order a kabuliyat for payment of hukammama and other fees according to the scale of fees prescribed under the Act, and the amount payable by the petitioner thereby which came to Rs. 30,000 was demanded by the respondent-State. In the meantime, the Rajasthan Land Reforms and Resumption of jagirs Act, 1952, had been passed and came into force on

February 16, 1952, and S. 4(a) of this Act enacted that "the liability of all jagirdars to pay tribute to the Government under any existing jagir Law shall cease", while "tribute" was defined by s. 2(r) in the following terms-. "Tribute" in relation to a jagir, includes rekh, rakam, chatund, chakri or other charge of a similar nature". The petitioner challenged the legality of the demand on the ground that the liability to pay hukamnama was a tribute within the meaning of that word in s. 4(a).

Held, that notwithstanding that the definition of the expression "tribute" in s. 2(r) of the Rajasthan Land Reforms and Resumption of jagirs Act, 1952, is inclusive, on an examination of the meaning of the word as used in the operative provisions of the Act, it could refer only to recurring payments which could be said to be attributable to particular years and not to the type of ad hoc payments of which hukamnama was an example.

Accordingly, the liability to pay hukamnama is not comprehended within the expression "tribute" under S. 4(a), and, consequently, was not extinguished by the provisions of the Rajasthan Act of 1952.

Thakur Narpat Sinah v. The State of Rajasthan, I.L.R. [1955] Rajasthan 534, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 200 of 1955.

Petition under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

S. K. Kapoor and Ganpat Rai, for the petitioner. G. C. Kasliwal and D. Gupta, for the respondents. St 1961. March 17. The Judgment of the Court was delivered by AYYANGAP., J.-Section 4 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (which will be hereafter referred to as the Rajasthan Act), enacts:

"4. All lands liable to pay land revenue.-Not- withstanding anything contained in any existing jagir law or any other law, all jagir lands shall, as from the commencement of this Act, be liable to payment of land revenue to the Government; and as from such commencement, the liability of-

(a) all Jagirdars to pay tribute to the Government under any existing Jagir Law shall cease, and The expression 'tribute', the liability to pay which was thus extinguished from and after the commencement of the Act, was defined in s. 2(r) of that Act in the following terms:

'Tribute' in relation to a jagir, includes rekh, rakam, chatund, chakri or other charge of a similar nature; and" In the absence of the above provision the petitioner would have been under an obligation to pay to the Government 'hukamnama' under s. 190 of the Marwar Land Revenue Act,

1949 (referred to hereafter as the Marwar Act) which codified the earlier law in that State. The short question that is raised by this petition under Art. 32 of the Constitution is whether the liability of the petitioner to pay 'hukamnama, the nature of which we shall explain later, has been extinguished by the provision of the Rajasthan Act above extracted which, as would be seen, turns on whether such a payment could be comprehended within the expression 'tribute'. Relying on s. 4(a) of the Rajasthan Act, the petitioner resists the demand of the same made by the respondent-State and impugns the legality of the claim.

It is necessary to set out a few facts and certain provisions of the Marwar Act to appreciate the matter in controversy. Thakur Nathu Singh, the Jagirdar of Ras-a "Scheduled Jagir" under the Marwar Act died in July 1946 leaving the petitioner, Thakur Bahadur Singh as his next heir. "Scheduled Jagirs" are, under the Marwar Act, impartable and their line of devolution was prescribed by s. 182 thereof which ran:

"Succession shall be governed in the case of Scheduled Jagirs by the rule of primogeniture."

The succession, " however, was not automatic but had to be recognised by the Government and a renewal granted in favour of the successor before his title to the jagir was perfected. Sections 183-185 of the Marwar Act which are of relevance in this connection, ran:

"S. 183. All grants of Scheduled Jagirs are only for the life-time of the holder, and no person is entitled to succeed to such jagir until his succession is recognized and the grant is renewed in his favour by His Highness.

S. 184. Subject always to His Highness pleasure, the grant of a Scheduled Jagir, on the death of the holder, shall be renewed in favour of the person entitled to succeed him in accordance with the provisions of this Act. S. 185(1). A Scheduled Jagir, on the death of the holder, and until the renewal of the grant in favour of his successor, shall be resumed by the Government and taken under direct management.

Provided that the claimant to succession shall, in the, absence of special orders of His Highness be permitted to retain possession pending orders of His Highness regarding the claim, if he is a direct lineal descendant in the male line of the last holder. (2)..... (3)..... (4).....

The title of the petitioner to succeed to the jagir as the next heir of his father was recognised and a renewal granted in his favour by the Government by an order dated March 18, 1952. Section 190 of the Marwar Act imposes an obligation on a succeeding heir whose title has been recognised and to whom a renewal of the jagir has been granted, to make certain payments. This section runs:

"S. 190(1). When succession to a Scheduled Jagir is recognised by His Highness and renewal of the grant ordered, the person in whose favour the grant is ordered to be renewed shall execute within one month of the communication to him of the orders, a 'Kabuliyat' for payment of Hukamnama and other fees payable in accordance with

sub-sections (2) and (3).

(2)..... (3).....

The amount payable by the petitioner, according to the scale of fees prescribed under the Act, came to Rs. 30,000 and the respondent-State demanded this sum. Before, however, the date of the order according recognition and granting renewal in favour of the petitioner, the Rajasthan Act of 1952 had been passed and having received the assent of the President on February 13, 1952, came into force on publication in the Gazette on February 16, 1952, and under s. 4 of this Act, whose terms have been set out already, the liability on the part of Jagirdars to pay "all tribute" to Government got extinguished.

The question debated in this petition is whether the liability to pay 'hukamnama' or other fees under s. 190 of the Marwar Act is a 'tribute' from the payment of which the Jagirdars are thus relieved.

It is common ground, subject to a submission of the learned Advocate-General for the respondent-State, which we shall refer to a little later, that if the 'hukamnama' which the petitioner has been required to pay to the Government was a 'tribute' within s. 4 of the Rajasthan Act, it would cease to be exigible and cannot be enforced from and after February 16, 1952, because it is not in dispute that the petitioner is a Jagirdar and 'hukamnama' regarding which the demand has been made on him- "is a demand which is due under an existing Jagir law", viz., the Marwar Act. The precise question which now arises for our decision came up before the High Court of Rajasthan in 1955 on facts exactly parallel with the case before us and a Bench of that Court held in a case reported as Thakur Narpat Singh v. The State of Rajasthan (1) that 'hukamnama' and the fees payable under s. 190 of the Marwar Act were not within, % 4(a) of the Rajasthan Act. Consequently, the arguments on either side before us took the form of either supporting the reasoning contained in that judgment or in disputing its correctness. It therefore becomes necessary for us to examine the reasoning upon which the learned Judges of the Rajasthan High Court reached a conclusion adverse to the contention of the petitioner now before us. Before doing so, however, it is necessary to advert to a point sought to be raised by the learned Advocate-General for Rajasthan for the respondent which would cut across all this debate. He sought to urge that s. 4 of the Rajasthan Act was not retrospective and that as the recognition of the title of the Petitioner and the renewal of the grant of the jagir in his favour related back to July 1946 when the succession opened, the Rajasthan Act could not be invoked to put an end to the obligation which had accrued years before it came into force notwithstanding that the orders of recognition and renewal were passed only in March 1952. In the circumstances of this case, however, and also regard being had to the point not having been raised in the answer filed by the State to the writ petition, we did not consider it proper to permit the Advocate-General to pursue the submission.

We will now proceed to consider the correctness or otherwise of the conclusion reached by the learned Judges of the Rajasthan High Court in the case just now referred to. Stated briefly, the ratio of their decision was as follows: Under the law governing jagir grants and the tenure on which they are held in Marwar, a 'hukamnama' is a levy chargeable for recognition of the succession of a person to a Scheduled Jagir (1) I.L.R. [1955] Rajasthan 534.

of his deceased ancestor. The specific dues, *Rekh* and *Chakri* enumerated in the definition of s. 2(r) of the Rajasthan Act are those levied in Marwar, the former being 8 per cent of the gross rental value of an estate and the second the cash equivalent of the obligation to supply horsemen or camelsowars or foot-soldier, -, by Jagirdars dependent upon the value of the estate. Similar payments are known as '*Rakam*' in the State of Bikaner and '*Chatund*' in the State of Udaipur, these States being the components of the State of Rajasthan. All these dues, *Rekh*, *Rakam*, *Chatund* and *Chakri* were annual and recurring payments made by Jagirdars. When therefore the definition in s. 2(r) concluded with the words 'other charges of a similar nature', it must necessarily be held that these general words should be confined to charges which were also recurring. The '*hukamnama*' and other dues payable under s. 190 of the Marwar Act, however, were not recurring payments and were in consideration of the ruler exercising his discretion to recognise a succession and grant renewal of the jagir in favour of the next heir. In other words, these were payments due to the ruler in recognition of his sovereign right to the ownership of the land which was statutorily embodied in ss. 169-170 of the Marwar Act which ran:

"S. 169. The ownership of all land vests in His Highness and all jagirs, bhoms, sansans, dolis or similar proprietary interests are held and shall be deemed to be held as grant, - from His Highness.

and S. 170. All grants shall be held by the original grantee or his successors during His Highness' pleasure."

The payments under s. 190 of the Act therefore were not of the same category as the payments enumerated in s. 2 (r) of the Rajasthan Act and hence could not be comprehended within the meaning of the expression 'tribute'.

The same matter was also put in a slightly different form by saying that whereas the payments enumerated in the definition of 'tribute' were those made by Jagirdars as such, i.e., after they got into possession, a '*hukamnama*' was a payment made not by a Jagirdar but by a person who was merely a claimant to a jagir and as a condition of his title to it being recognised.

The correctness of this reasoning was challenged before us by learned Counsel for the petitioner who urged that the learned Judges of the High Court did not accord sufficient consideration to the fact that the definition in s. 2(r) was an 'inclusive' definition and could, therefore, include others not falling within the enumerated types. In this connection, learned Counsel relied upon the meaning of the word 'tribute' in Webster's New International Dictionary and in the Oxford English Dictionary, Volume IT. In the former, one of the meanings given is:

"A tax, impost, duty, rental, or the like, paid by a subject vassal to his sovereign or lord". and in the latter:

"A tax or impost paid by one prince or state to another in acknowledgement of submission or as the price of peace, security and protection".

He therefore urged that the expression 'tribute' in s. 2(r) would include those which fell within the ordinary dictionary meaning of the term-, in addition to those specifically enumerated therein. If the word were understood in its ordinary dictionary meaning without any statutory definition, learned Counsel added, the incidence of recurrence would not be a necessary attribute of the concept of a 'tribute'. The submission was that the learned Judges of the Rajasthan High court erred in confining the meaning of 'tribute' to the enumerated payments and "other charges of a similar nature", without taking into account the fact that this was an inclusive and not an exhaustive or even an illustrative definition. We see force in these submissions and it must also be said that the argument in this form and the construction of s. 2(r) from this aspect has not been considered by the learned Judges of the Rajasthan High Court.

We have, therefore, to examine whether the submission can be sustained. Our task is, to discover whether the expression 'tribute', as it occurs in the Rajasthan Act, includes payments of the type now in controversy. Apart from the usual express saving contained in the opening words of s. 2 that the definitions set out are to be applied "unless the context otherwise requires", the meaning of the word 'tribute' has to be ascertained from a consideration of the various provisions of the Act and not merely from s. 4(a) of the Act read in the light of the definition. It would be seen that in ultimate analysis the question of construction posed for our decision may be thus set out: The four specific enumerated dues in the definition in s. 2(r) are recurring annual payments. "Other charges of a like nature" which follows this enumeration, would obviously partake of that character and they would also have to be similarly annual. and recurring. This was the basis of the decision of the learned Judges of the Rajasthan High Court and the correctness of this view up to this point cannot be and has not, been disputed. The definition, however, being "inclusive" and not "meaning" these, it is said it must "include" something else. It must, however, be added that the possibility cannot be ignored that the definition was made inclusive out of caution and with a view not to exclude any payment which jagirdars were making or were under an obligation to make, to Government, seeing that the Act was to apply to an integrated State composed of several States in which there might have been great diversity of nomenclature in designating these payments, and so as not to exclude any payment which would squarely fall within the category regarding which provision was made in the operative portion of the enactment.

Learned Counsel for the petitioner urges that every payment by a Jagirdar to the Government, whatever be the nature of the payment and whatever be the consideration therefore, is included in the expression. If the expression 'tribute' occurred only in s. 4(a) in the operative provisions of the Act, there might be much to be said for the view presented by learned Counsel for the petitioner and for invoking its dictionary meaning to ascertain the content of that word. The Act, however, has used the word 'tribute' in several other sections and in different contexts and we consider that the precise ambit of this expression of rather indefinite import as contemplated or intended by the framers of this Act has necessarily to be gathered from the entirety of the provisions. The ,word tribute' was apparently no equivalent in the local languages, so that it was obviously used as a convenient and compendious expression to designate certain imposts which were levied by the rulers of the several States which integrated to form the State of Rajasthan. Further, this circumstance should obviously induce some caution before the dictionary meaning of the English word tribute' is treated as expressing the intention of the framers of the Rajasthan Act.

We shall therefore proceed to set out and consider the other provisions of the enactment in which the word is used to discover the intentions of the framers of the Act as to what they meant by it. Before proceeding further, we should add, that as under s. 4(a) of the Rajasthan Act, the payment of Land Revenue computed under it is to be the substitute for the 'tribute' previously demandable or paid, the manner in which the land revenue under the Act is determined would be relevant as throwing light on for what it is substituted. We have already set out the terms of s. 4 of the Rajasthan Act under which in substitution of the payment of 'tribute' all lands are made liable to the payment of land revenue. The amount of land revenue payable by a Jagirdar is fixed by s. 8 and this is based in part on the annual rental income which could be derived from the jagir computed in the manner set out in ss. 6 and 7. For our present purpose s. 8 is of importance, because the amount of 'tribute' payable forms one of the factors for determining the amount of 'land revenue payable'. Section 8 enacts:

"S. 8. Amount of land revenue payable.-The land revenue payable by a Jagirdar in respect of his jagir lands shall be-

(a) for the agricultural year 1951-52, an amount equal to the amount of tribute payable by him to the Government for that year;

(b) for the agricultural year 1952-53 and each of the six succeeding agricultural years-

(i) in the case of jagir lands the annual rental income of which as determined under section 6 or section 7, exceeds five hundred rupees but does not exceed five thousand rupees, one sixteenth of such rental income or the amount of the tribute which was payable by the Jagirdar for the agricultural year 1950-51, whichever is greater;

(ii) in the case of jagir lands the rental income of which as determined under section 6 or section 7 exceeds five thousand rupees, one-eighth of such annual rental income or the amount of the tribute which was payable by the Jagirdar for the agricultural year 1950-51, whichever is greater.

Explanation.-For the purpose of this clause the amount of tribute payable by a Jagirdar to the Government for the agricultural year 1950- 51 shall be deemed to be the amount of such tribute less the amount of any tribute payable to such jagirdar by any person to whom the Jagirdar may have granted any of his jagir lands;

(c) for the agricultural year 1959-60 and subsequent years, one fourth of the rental income from the jagir lands as determined under sections 6 and 7;

Provided that-

(i) where no tribute was payable by the Jagirdar before the commencement of the Act or where the whole of the tribute has been paid before such commencement, the jagir lands shall be deemed to be exempt from the payment of land revenue for the

agricultural year 1951-52;

(ii) where the jagirdar has paid a part of the tribute before the commencement of this Acts, the land revenue payable by him for the agricultural year 1951-52 shall be an amount equal 'to the balance of the tribute which would have been payable by him for that year if this Act had not been passed; and

(iii) the Government may direct that for the purposes of clauses (b) and (e) of this section, the rental income of any jagir land for all or any of the agricultural year mentioned in those clauses shall be determined or redetermined on the basis of the rental income which actually accrued to the jagirdar from the jagir in such year or years, as the case may be."

It will be seen that this section speaks of tribute payable for the, year specified-1951-52 or 1950-51 and it is obvious that the tribute here referred to could only be the recurring payments like those enumerated in the definition in s. 2(r) to which could be attributed the character of being a payment for a specific year. Besides, it will be, seen that under s. 8(b) the land revenue payable for the seven agricultural years 1952-53 to 1959-60 is to be either a fraction of the annual rental income or "the amount of the tribute which would be payable by the Jagirdar for the year 1950-51 whichever is greater". Surely it would be most unreasonable to hold that if during the year 1950-51 a Jagirdar made a payment of 'hukamnama' this ad hoe payment should be treated as part of the tribute for that year and the Jagirdar made liable to pay sums including 'hukamnama' for the seven years 1952-53 to 1959-60.

The main object of the Rajasthan Act was to effect resumption of jagir lands by eliminating intermediaries and the 'tribute' payable by the erstwhile Jagirdars enters into the calculation for computing the compensation payable to them on such resumption. The second schedule to the Act sets-out the principles governing the compensation payable to Jagirdars. It may broadly be stated that the compensation payable, to Jagirdars is determined on the basis of a multiple of the net income of the basic year as determined under r. 1 of the second schedule. The net income is computed by first determining the gross income of the Jagirdars under various heads including the rental income and deducting therefrom certain outgoing which included the "tribute' Rule 4 of schedule 2 provides:

"4. Net income.-The net income of a Jagirdar for the basic year shall be calculated by deducting from his gross income therefore,-

(i) the amount that the Jagirdar would have been liable to pay to the Government as tribute, and, in the case of grantee from a Jagirdar, to the Jagirdar in respect of such grant, for the basic year if this Act had not been passed;

(ii) any sums of recurring nature due to the Government from the Jagirdar, or in the case of grantee from the Jagirdar to the Jagirdar, for the basic year on any account other than land revenue,; and

It is impossible to conceive that the framers of the Act would have intended that the payment of a 'hukamnama' in the basic year should have a permanent effect on the quantum of compensation payable to a Jagirdar under the provisions above extracted.

In addition to the compensation for the presumption of the jagir under the provisions of the Rajasthan Act, the Jagirdars are entitled to be paid a rehabilitation grant under Chapter VIII A of the Act. The method of calculation of this amount is set out in Schedule III of the Act and for this purpose Jagirdars are classified on a graduated scale into various categories depending on the gross income from the estate. This is followed by a proviso in these terms:

"Provided that for the purpose of calculating the rehabilitation grant payable to a Jagirdar falling in this category such marginal adjustments shall be made as will ensure that a Jagirdar having a higher net income does not get an amount by way of rehabilitation grant which is less than that payable to a Jagirdar having a lower net income. Provided further that, in comparing Jagirdars with different amounts of income for the purpose of the first proviso to this sub-clause,-

(i) Jagirdars who were riot paying tribute shall be compared only with Jagirdars who were not paying tribute,

(ii) Jagirdars who were paying tribute shall be compared only with Jagirdars who were paying' tribute,

(iii) Jagirdars who were paying any sums of recurring nature referred to in sub-clause

(ii) of clause 4 of the Second Schedule shall be compared only with Jagirdars Who were paying such sums, and

(iv) in respect of Jagirdars who were paying tribute or any sums of recurring nature referred to in sub. clause (ii) of clause 4 of the Second Schedule at different scales, the Government shall prescribe a percentage of the gross income at which the amount of tribute or such sums in respect of each Jagirdar shall be calculated irrespective of whether the amount of tribute or such sums of recurring nature that were being actually paid by him."

What we have said earlier about the construction of the word 'tribute' in r. 4 of Schedule II would equally apply to the construction of that expression as it occurs in the provision extracted from Schedule III.

Notwithstanding therefore that the definition in s. 2(r) of the Rajasthan Act is 'inclusive' it appears to us from an examination of the meaning of the word as used in the operative provisions of the Act, that it could refer only to recurring payments which could be said to be attributable to particular years and not to the type of ad hoc payments of which hukamnamas and patta-fees are examples. It might very well be that the words at the end of s. 2(r) "other charges of a similar nature" might not

exhaust all the payments which a 'tribute' connotes but still if the rest of the Act indicates unmistakably the intention, that the word 'tribute' has been used in a special sense taking into account the law and usage obtaining in the locality, these cannot be disregarded in favour of a wider construction based merely upon the dictionary meaning of the expression. We need hardly add that the provision to which we have adverted should suffice to show that the construction put forward by learned Counsel for the petitioner would work to the grave disadvantage of the Jagirdars and would cause them deprivation which could never have been intended. We have thus reached the same conclusion as the learned Judges of the Rajasthan High Court, though on a different line of reasoning.

On the construction which we have adopted of the expression 'tribute' in s. 4 of the Rajasthan Act the petitioner can have no legal or legitimate grievance against the enforcement of the payment made against him. The petition fails and is dismissed. There will st, be no order as to costs.

Petition dismissed.