Supreme Court of India
Mohd. Habbibuddin Khan vs Jagir Administrator, Government ... on 11 October, 1973
Equivalent citations: AIR 1974 SC 61, (1974) 1 SCC 82, 1973 (5) UJ 845 SC
Author: Mukherjea
Bench: A Mukherjea, K Mathew, M Beg
JUDGMENT Mukherjea, J.

1. These two appeals by special leave are directed against a common judgment dated September 29, 1970 passed by the Andhra Pradesh High Court in two writ petitions. This Judgment will dispose of both the appeals.

2. The appellant who was the petitioner before the High Court is a Hissedar in the Paigah estate of Vicar-ul-Umra. In August 1949, the Jagirs of what was previously the Hyderabad State were abolished by and under a Regulation called the Hyderabad (Abolition of Jagirs) Regulation 1358F. (No, LXIX of 1358F.) This Regulations which we shall briefly describe as the Jagir Abolition Regulations, was promulgated for the purpose of abolition of Jagirs and to provide, pending the determination of the terms of commutation, for the payment to Jagirdars and Hissedars of certain interim allowances. The Jagirs under the Regulation also included a Paigah. Section 2(e) of the Regulation defines a Hissedar as a person who is entitled to a share in the income of a Jagir according to the existing law. Section 2(f) of the Regulation states among other things that Jagir includes a Paigah. Under Section 5 of that Regulation the Government was to appoint a date for the transfer to Government of the administration of Jagirs and different dates could be appointed for different Jagirs. On the date so appointed for any Jagir the Jagirdar was to make over the management of his Jagir to the Jagir Administrator. As from the appointed date the Jagir was to be included in the Diwani and was to be administered by the Jagir Administrator. The same Regulation provides for certain payments to the Jagirdars and Hissedars by way of "interim maintenance allowances" which were to be payable until such time as the terms for the commutation of Jagirs are determined.

3. The aforesaid Jagir Abolition Regulation followed closely by the was promulgation of another Regulation called the Hyderabad Jagir (Commutation) Regulation, 1359F. (No. XXV of 1359F.) This Regulation, which we shall briefly describe as the Commutation hereinafter, provided for the termination of the interim allowances payable under the Jagir Abolition Regulation and also for the determination of the terms of commutation of Jagirs. Under the provisions of this commutation Regulation it was the Jagir Administrator who was to determine the commutation sum to be paid for any particular Jagir. Section 3 of the commutation Regulation lays down the method of calculation of the commutation sum by providing that this sum for every jagir shall be found out by multiplying the 'basic annual revenue' of the jagir calculation in accordance with Section 4 of the Regulation by the figure specified in the appropriate entry in the second column of the table annexed to that section. The same section provides for the minimum amount as commutation and indicates the minimum amount in the table annexed to that section. Section 4 lays down the method of calculation of the 'basic annual revenue' and shows how the figure is to be deduced in the case of a jagir from the "gross basic sum" which is defined as "the average annual gross revenue of the jagir for the 10 years opening with the year 1347 F. and ending with the year 1356 F." less certain

deduction indicated in the same section. There are certain other conditions in regard to this calculation with which we are not concerned. Under Section 6(1) of this commutation Regulation the commutation sum for every jagir has to be determined order passed by the Jagir Aministrator or by an officer authorised by him in that behalf. The Jagir Administrator or his authorised officer has been given the power, on their being satisfied that the amount determined as commutation requires revision, to make such revision Suo moto either by decreasing or by increasing the sum. Sub-section (2) of Section 5 provides for an appeal to the Board of revenue by a person aggrieved by the determination of a commutation sum and the Board is authorised either to confirm the determination of the Jagir Administrator or his authorised officer or to revise it in such manner as it thinks fit. Section 6 of that commutation Regulation provides for distribution of the commutation sum. Section 7 of the same Regulation provides for payment of commutation sum or shares thereof to the persons entitled to participate in the distribution thereof in accordance with the rules to be prescribed for the purpose. In the case of a dispute the amount has to be deposited with a prescribed authority in a prescribed manner and subject to certain prescribed conditions. Sub-section (2) of Section 7 says that the payment to a Jagirdar or Hissedar of his appropriate share of the commutation sum of the jagir shall constitute the final commutation as from the 1st April 1950 of his rights in the Jagir. Sub-section (3) of Section 7 provides for some adjustment from the final payment of the commutation sum of any excess in the interim maintenance allowance paid to any jagirdar or hissedar. Section 8 which was added later on to this commutation Regulation provides for recovery of any amount due to government from jagirdar or hissedar by way of adjustment.

4. Soon after this Commutation, the Hyderabad Atiyat Enquiries Act (X of 1952) was passed. This Act was 'to amend and consolidate the law regarding Atiyat grants, in respect of Atiyat Enquiries, enquiries as to claim to succession, or any right or title or interest in Atiyat grants or matters ancillary thereto". Clause (a) of Sub-section (1) of Section 2 of the Act defines Atiyat Court as "a court or authority competent to make Atiyat enquiries as to claims to succession to and any right, title or interest in Atiyat grants and matters ancillary thereto". Clause (b) of the same Sub-section (which was inserted by the Amending Act of 1956) defines "Atiyat grants" among other things as.-

(i) In the case of jagirs abolished under the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli (LXIX of 1358F.) the commutation sums payable in respect there of under the Hyderabad Jagirs (Commutation) Regulations, 1359 F. (XXV of 1359 Fasli);

(ii) inams to which the Hyderabad Abolition of Inams Act, 1956 (VIII of 1955) is not applicable;

(iii) in the case of inams abolished under the Hyderabad Abolition of Inams Act, 1955 (VIII of 1958), the compensation payable under that act.

Clause (c) of the same sub-section defines Muntakhabs and Vasikas as "document issued by competent authorities as a result of Inams or successions enquiries held under the Dastor-ul-Amal Inams or other Government orders on the subject and issued by way of continuance or confirmation of Atiyat grants." Section 3A of this Act, which is very important for our purposes, is in the following terms :-

3A. (I) In the case of Atiyat grants specified in Sub-clause (i) of Clause (b) of Sub-section (I) of Section 2, Atiyat enquiries as to any right, title or interest therein shall, notwithstanding anything contained in the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli (LXIX of 1358 F.) be held in Atiyat Courts in accordance with the provisions of this Act, and in the course of such enquiries, Atiyat Courts shall also be competent to enquiries into claims to succession arising in respect of such grants:

Provided that claims to succession arising after the completion of Atiyat inquiry of any such grant shall not be entertained in any Atiyat Court and all such claims shall be filed in and decided by the competent Civil Court.

(2) In the case of Atiyat grants specified in Sub-clause (ii) to (vi) of Clause (b) of Sub-section (I) of Section 3, all Atiyat enquiries, enquiries as to claims to succession to, or any right, title or interest therein and matters ancillary thereto shall be held in Atiyat Courts in accordance with the provisions of this Act.

5. Sections 8, 9 and 10 which have been considerably changed by certain insertions made by the Amending Act of 1956 provide for the Constitution or Atiyat courts, their jurisdiction and procedure. Section 11 provides for appeals from the decisions of the different classes of Atiyat Courts.

6. The appellant in his petition before the High Court among other things challenged the vires of the two Regulations. The High Court rejected that challenge and the appellant did not take any objection before us to the High Court decision on this point, we are not, therefore, concerned with validity of the Regulations.

7. The main challenge of the appellant in his writ petitions is against certain Atiyat enquiries held in connection with his claims for commutation under the Commutation Regulation in respect of the Paigahs to which he was a hissedar. It was contended on behalf of the appellant that the Atiyat courts had no jurisdiction to hold an investigation into the appellant's claims regarding commutation The substance of the appellant's contention seems to be as follows. Under the Commutation Regulation the jurisdiction to determine the sums of commutation payable to any jagirdar or hissedar belongs to the Jagir Administrator or any officer authorised by the Jagir Administrator in that behalf. How the Jagir Administrator is to make this commutation has been precisely set out in the Regulation itself. All that the Jagir Administrator has got to do in determining this sum is to follow the procedure laid down in Section 3 and also the procedure of calculation laid down in Section 4 of the Commutation Regulation. The Jagir Administrator has first to find out the 'basic annual revenue' of the jagir. For doing this he has to find out the 'gross basic sum' in terms of Sub-section (2) of Section 4. Now this gross basic sum is an average annual gross revenue of a jagir for a period of ten years. Certain deduction have to be made. But what are those deductions are also already known and require no enquiry. The average under Sub-section (2) is of certain amounts of gross revenue payable by the jagirdar, to the government according to the documents of title. The field of enquiry of the Jagir Administrator is not therefore large. If the documents of title of a jagirdar show the amounts that are payable by the jagirdar the Jagir Administrator does not have to go beyond those documents of title. In the instant case, for

instances, the Jagir Administrator, we are told, has been making provisional awards to the Paigah estate belonging to the appellant from the year 1953. The appellant contends that certain reports submitted by certain authorities appointed by the Nizam in in 1920 and 1926 namely the report of Glancey Commission appointed in 1920 and the report of the Reilly Commission in December 1926 have received the approval of the Nizam by a Firman of 1338F. and this Firman of 1338 F. is to be treated as a Vasikas i.e. document of title relating to the jagir. Therefore, after the promulgation of the jagir Abolition Regulation and the Jagir Commutation Regulation all that the Jagir Administrator had to do was to fall back upon the Firman of 1338F. and the Reilly Commission's report which was confirmed by that Firman for ascertaining the extent of jagirs included in the paigahs of the appellant. The Jagir Administrator would also work our from the Budgets of income and expenditure of the Paigah which had been submitted every year from 1938 till 1948 by the Accountant. Generals of the Paigahs and sanctioned by the Nizam from year to year and work out what should be the 'gross basic sum" in respect of each jagir. That being the position, the appellant contends, there is no scope for any further enquiry into any Atiyat claims under the Atiyat Enquiries Act. This in brief is the main contention urged on behalf of the appellant before us.

8. We regret that we find no substance in the contention advanced before us by the appellant's counsel. There is no reason to limit the jurisdiction of the Atiyat Courts established under the Atiyat Enquiries Act, 1952. They are competent to make Atiyat enquiries as to claims to succession to any right, title or interest in Atiyat grants and matters ancillary thereto. Paragraph 2 of the statement of Objects and Reasons of Act XXVII of 1956 by which the Atiyat Enquiries Act, 1952 was amended contains the following observation:-

2. Although jagirs have been abolished, cases of inam enquiries respect of several jagirs are yet to be completed and payment of commutation sum depends on the completion of such enquiries. It is obvious that in view of the nature of there grants, such, enquiries should be held in Atiyat Courts....

9. Clearly therefore it is found necessary in respect of any claim of commutation to ascertain the extent of the jagirs, that enquiry must be carried out by the Atiyat Court in accordance with Section 3A of the Act of 1952. The jurisdiction given to the Atiyat Courts in that Act seems to be comprehensive. It is not for us to say at this stage what is the value of the Reilly Commission's report or the Firman of 1338F. for the purpose of finally determining the extent of Paigah held by the appellant. The various reports and the Firman as well as the various budgets on which the appellant relied are matters of evidence which should be placed before the Atiyat court and it is for the Atiyat Court to judge in the light of this evidence the extent of the Paigah. It is to be remembered that all these reports and even the Firman are considerably prior in time to the date with reference to which the Jagir Commutation has to he determined. Since the date of those enquiries and since 1338F. when the Nizam issued his Firman the estate could have dwindled in size. Indeed, respondents in this case contend that considerable portions of the lands covered by the Paigah of the appellant have been submered by an artificial lake and that the appellant has already received compensation in respect of those lands so that those submered lands should not be treated as part of his paigah in calculating the commutation due to the appellant. Besides, the appellant, according to the respondents, has created several sub jagirs so that the commutation in respect of the lands of the sub-jagirdars should be payable to the subjagirdars and not to the appellant. Whether these

allegations of the respondents are true or not is more than we can say or should say. These questions, however, have to be decided for ascertaining the extent of the paigah for which the appellant claims commutation. There is obviously a need for investigation. It is not at all our intention to say that the evidence on which the appellant relies is either useless or non-conclusive. Whatever may be the weight of that evidence, the matter is to be decided by the special courts viz, the Atiyat Courts, which have been set up to enquire into the claims of jagirdars and hissedars. Therefore, it is to the Atiyat Court that the appellant should have gone. Indeed, an Atiyat Court has gone into the appellant's claims and has rejected a part of his claims. Being aggrieved by the decision of that court the appellant filed an appeal to the Board of Revenue and then, on an afterthought, instead of pressing the appeal before the Board of Revenue which is indeed the proper forum to adjudicate this matter, the appellant withdrew the appeal and went before the High Court and filed two writ petitions challenging among other things the authority of the Atiyat courts to enquire into the validity of the appellant's claims for commutation.

10. The High Court has dismissed the writ petitions of the appellant and has directed the Board of Revenue to re-entertain the appellant's appeal and to dispose of the appeal after giving an opportunity to the petitioner to place such materials as he desires to place. We have no doubt in our mind that this order of the High Court was the best order that could be made in the circumstances and it does not result in any prejudice to the claims of other party to this dispute. In the circumstances, we dismiss both the appeals and uphold the decision of the High Court. The previous order by which proceedings before the Board of Revenue had been stayed is vacated. The direction given by the High Court should now be carried out. The appellant claimed before us for an order which will entitle him to receive some interim maintenance allowances : the respondents pointed out that they have always been prepared to make the payments if the appellant could furnish adequate bank guarantee to the satisfaction of the court. Since the interim allowances are liable to be adjusted against the final commutation sum payable to the appellant and since, according to government, the appellant has already received sum in excess of what would be finally due to him by way of commutation it is difficult to take an exception to this claim of the respondents. Since the appellant is not, we are told, prepared to furnish bank guarantee, we decline to pass any further order in this matter.

11. In the circumstances of the case, we make no order as to costs.