CHOUDHARY JAWAHARLAL & ORS.

v.

STATE OF MADHYA PRADESH

October 30, 1969

[S. M. SIKRI, G. K. MITTER AND P. JAGANMOHAN REDDY, JJ.]

Princely State—Construction of public buildings—Merger with Indian State—Liability of successor State to honour claim for payment—Act of State; what is.

The appellants constructed certain public buildings in a princely state and the Maharaja admitted the claim of the appellants and executed a promissory note for the amount claimed. The princely State was merged with State of Madhya Pradesh and the State Government (respondent) took over the possession of the public buildings.

On the question of the liability of the respondent to pay the amount of the promissory note,

HELD : (1) The fact that the appellants were asked by the respondent to supply details of their claim did not amount to an acceptance of the liability. It was open to the respondent to examine and satisfy itself whether it should honour the liability or not and it could not be said that the State had waived its defence of Act of State.

(2) An Act of State is an exercise of sovereign power over a territory which was not earlier subject to its sway. When such an event takes place and territory is merged, although the soverign might allow the inhabitants to retain their old laws and customs or undertake to honour the liabilities, it could not be itself bound by them until it purported to act within the laws by bringing to an end the defence of Act of State. The rule applies even in case of a public property of the erstwhile State which the successor State takes over and retains as part of its public property. [212 A]

Raja Rajender Chand v. *Sukhi & Ors.* [1956] 2 S.C.R. 889, *State of Saurashtra* v. *Memon Haji Ismali,* A.I.R. 1959 S.C.R. 1383 and *Vaje Singh ji Joravar Singh & Ors.* v. *Secretary of State for India,* 51 I.A. 357, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 97 of 1966.

Appeal from the judgment and decree dated January 11, 1962 of the Madhya Pradesh High Court in First Appeal No. 115 of 1958.

M. S. Gupta, for the appellants.

I. N. Shroff, for respondent No. 1.

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J.—This appeal is by certificate granted by the High Court of Madhya Pradesh under Article 133(i)(a) of the Constitution of India against its judgment and decree by which it reversed the judgment and decree of the Addl.

A District Judge, Ambikapur. The High Court held that the claim of the appellant on the promisory note executed by the Maharaja of Surguja—an erstwhile Ruler whose state was merged in Madhya Pradesh, could not be enforced against the 1st Respondent the State of Madhya Pradesh because after the cession of the erstwhile State, the new State had not expressly or impliedly undertaken to B meet that liability. In other words, the plea of 'an act of State' raised by the 1st respondent was accepted.

The circumstances in which the suit was filed by the appellants and the array of parties may now be stated. Appellants 1, 2, 3 and deceased Hira Lal were brothers and members of a Joint Hindu family. Appellant 4 is the wife of Hira Lal, appellants 5 C to 7 are his sons and appellant 8 is the grand-son. All these appellants along with appellants 1 to 3 constitute a Joint Hindu family which was carrying on business of construction of buildings under the name and style of Hira Lal & Bros. at Ambikapur in the erstwhile State of Surguja. The allegations in the suit filed by the appellant against the respondent State was that they had construct- D ed buildings of the District Court and the Secretariat at Ambikapur in 1936. The work was completed but in so far as payment was concerned, there was a difference of opinion about the measurements etc. but ultimately it was decided to pay to the appellants Rs. 80,000 on account of the said construction and accordingly the Maharaja of Surguja—2nd respondent executed a promisory E note in favour of the appellants on 27-9-1947 for Rs. 80,000 with interest @ Rs. 3 per annum. Thereafter the Madhya Pradesh Government took over the administration of the State of Surguja on 1-1-48 after the merger of the Chattisgarh State and consequently the Court building as well as Secretariat building were taken possession of by the Government. When the appellants claimed the money from the State of Madhya Pradesh, it neither F accepted the claim nor paid them. The appellants after giving a notice u/s 80 of the Code of Civil Procedure filed a suit.

On the pleadings, the Trial Court had framed several issues but it is unnecessary to notice them in any great detail except to say that the claim of Rs. 80,000 was held to be valid, that this G amount was payable on account of the construction of the buildings known as Court and Secretariat buildings, that the pronote was not without consideration, that the first defendant was the successor in interest of Surguja State and is liable to pay the claim with interest and that the amount was not due to the plaintiffs on account of the personal obligation and liability of the 2nd respon- H dent. The Court also found against the first respondent on the issue relating to jurisdiction and negatived the defence that it is not liable because of an act of State. In so far as the defendant the Maharaja of Surguja was concerned, it held that the suit was

not maintainable against him without the consent of the Central Govt. as required under section 86 of the Civil Procedure Code and that the liability was not a personal obligation of the Maharaja but an obligation incurred on account of his State. In the result as we said earlier the Court awarded a decree for Rs. 87,200 with full cost against the first defendant and discharged the second defendant. In appeal the High Court while noticing that it is the admitted case of the parties that the District Court and the Secretariat building were public property and were in the possession of the first defendant as such and that that the liability in respect thereof was incurred by the Maharaja was not merely his personal liability but was a liability incurred on behalf of the State of Surguja, however, reversed the judgment of the Trial Court by holding "the the liability of the State of Surguja under the pronote was at best a contractual liability and this liability could only be enforced against the State of Madhya Pradesh if after the cession of the erstwhile State of Surguja, the new State had expressly or impliedly, undertaken to meet that liability" which it had not done. When this appeal came up on an earlier occasion, a Civil Miscellaneous Petition 429 of 1969 was filed by the appellant; that inasmuch as the petitioners had been advised to approach the State Govt. again for making proper representation and to canvass their claim before the appropriate authority on the basis of the concurrent findings of the Courts below and or any other appropriate orders, permission may be accorded to them to pursue this course. The Respondents advocate did not oppose this petition and accordingly the matter was adjourned. But it would appear that no concrete results could be achieved.

In this appeal what we have to consider is whether the plea of an act of State is sustainable having regard to the concurrent findings of the Court namely that the Court and Secretariat buildings were constructed by the appellants, that the erstwhile Maharaja —the second respondent had admitted the claim and executed a promisory note, that the liability was incurred in respect of public buildings for which the State of Surguja was liable. The fact that appellants were asked to supply details of their claim and the first respondent was prepared to consider it has been urged as being tantamount to the acceptance of the liability. In our view no such inference can be drawn. It is open to the State to examine and to satisfy itself whether it is going to honour the liability or not, but that is not to say that it had waived its defence of an act of State if such a defence was open to it. What constitutes an act of State has been considered and the principles enunciated in numerous cases both of the Privy Council and of this Court have been stated. Many of these, decisions were examined and discussed by the High Court in its judgment and it is unnecessary for

(1) [1956] 2 S.C.R. 889.

A us to re-examine them in any great detail. These decisions lay down clearly that when a territory is acquired by a sovereign state for the first time that is an act of State. As pointed out in *Raja Rajender Chand* v. *Sukhi & other*(1) that 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 B occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the Municiple Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. The principle upon which the liability of an erstwhile ruler is contested by the plea of an act of State "is an exercise of C sovereign power against an alien and neither intended nor purporting to be legally founded. A defence of this kind does not seek to justify the action with reference to the law but questions the very jurisdiction of the Courts to pronounce upon the legality or justice of the Action", vide *State of Saurashtra* v. *Memon Haji Ismail*(2) In *Vaje Singh Ji Joravar Singh and others* v. *Secretary of State for India in Council*(3) it was observed :

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> "After a sovereign State has acquired territory, either by conquest, or by cession under treaty, or by the occupation of territory theretofore unoccupied by a recognized ruler, or otherwise, an inhabitant of the territory can enforce in the Municipal Courts only such E 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 that existing rights will be recognized is that the Government will F 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 power to adjudicate in the matter".

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> "It is the acceptance of the claim which would have bound the new sovereign State and the act of State would then have come to an end. But short of an acceptance, either express or implied, the time for the exercise of the H Sovereign right to reject a claim was still open".

(1) [1956] 2 S.C.R. 889. (2) A.I.R. 1959 S.C. 1383.

(3) 51 I.A. 357

It appears to us that an act of State is an exercise of sovereign power over a territory which was not earlier subject to its sway. When such an event takes place, and the territory is merged, although sovereign might allow the inhabitants to retain their old laws and customs or undertake to honour the liabilities etc., it could not be itself bound by them until it purported to act within the laws by bringing to an end the defence of 'act of State'. The learned advocate for the appellant was unable to refer us to any authority which will justify any variation of this rule, in the case of liability incurred in respect of a public property of the erstwhile State which the successor State has taken over and retains as part of its public property. The judgment of the High Court is in accord with the well recognized principles of law declared from time to time by this Court. In our view the defence of 'Act of State' however unreasonable and unjust it may appear to be can be successfully pleaded and sustained by 1st respondent to non suit the appellants. The appeal is dismissed accordingly but without costs.

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R.K.P.S. *Appeal dismissed.*