STATE OF MYSORE

v.

ANANT VINAYAK PATWARDHAN

February 26, 1974

[K. K. MATHEW AND A. ALAGIRISWAMI, JJ.]

Bombay Merged Territories Miscellaneous Alienation Abolition Act, 1955, *Section* 17—*Tainat (Cash Allowance) granted to respondent's ancestors by the Peshwas—Allowance continued by Ruler of Jamkhandi under terms of treaty with East India Co.—Subsequently Ruler of Jamkhandi converted allowance to one for life—Whether cash allowance payable was permanent and hereditary—Commutation amount whether deductible from cash allowance for payment of compensation.*

The respondent's ancestors had been granted a cash allowance called Tainat by the Peshwas. After the defeat of the Peshwas by the British, by the Treaty of Gulgallee with Jamkhandi dated 6-6-1819 by the then Governor of Bombay on behalf of the East India Co. one of the terms which were granted to Gopalrao Jamkhandikar was regarding the terms which he held from the Govt. of His Highness the Peshwa, for the payment of his contingent (apparently army) out of his personal allowance. It stated that he was to continue all allowances and no complaints on this head were to be suffered to reach the Government. The allowance to the respondent's ancestors was one such allowance. The extract from the Petha Khata wahi of 1942-43 shows that the grant was permanent. But in 1944, the then Ruler of Jamkhandi converted the allowance to one for life. After the Jamkhandi State was merged in the State of Bombay, the Bombay Legislature passed the Bombay Merged Territories Miscellaneous Alienation Abolition Act, 1955. The respondent filed an application on 21-7-1956 under section 17 of that Act claiming that the cash allowance payable was both permanent and hereditary but that he learnt that the Ruler of Jamkhandi had passed an order that the said allowance be continued till his (applicant's) life time when the same was continued to him after the death of his father. He mentioned that he had moved the Rajasaheb by an application which was not disposed of. He, therefore, claimed that he would be entitled to seven times the cash allowance, permanent on the basis that it was permanent or in the alternative to three times the cash allowance on the basis that it was payable for life. However, by this time, the Ruler of Jamkhandi was no longer a Ruler and was not in a position to be of any assistance to the respondent on the basis of his application. The Assistant Commissioner of Jamkhandi passed an order granting a sum equal to three times the annual sum which the respondent was receiving. On appeal by the respondent to the Appellate Tribunal, the Tribunal held that the Ruler of Jamkhandi had sovereign power and was the fountain head of all sources of authority, that is, executive, judiciary and legislature and he could change the Tainat cash allowance at his sweet will and pleasure. The Tribunal accordingly dismissed the appeal. The respondent thereupon filed a writ petition before the High Court. The High Court directed that a sum equal to seven times the annual cash allowance be paid to the respondent on the basis that the grant was hereditary. The State Government thereupon appealed by a special leave to this Court.

Allowing the appeal,

HELD: (I) The constitutional position of the Ruler of every one of the Indian States before their integration with the rest of India and coming into force of the Constitution of India was that he enjoyed uncontrolled sovereign powers and there were no constitutional limitations upon his authority to act in any of the three capacities of legislature, executive and judiciary. It follows, therefore, that if the Ruler of Jamkhandi had changed the permanent cash allowance granted to the respondent's ancestors to one for life, it is legally valid and it cannot be questioned. [463 A—B]

A *Ameer-up-Nissa Begum* v. *Mahboob Begum*, A.I.R. 1955 S.C. 352, relied on.

(II) The Tainat allowance being service allowance the deduction of the commutation amount is for the payment to the person who was doing the service in place of the cash allowance holder. That is why what was being paid to the respondent year after year was the cash allowance minus the commutation amount. The commutation amount is, therefore, deductible from the cash allowance while calculating the compensation payable to the respondent. [463 D—E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1741 of 1967.

APPEAL by special leave from judgment and order dated the 30th November, 1962 of the Mysore High Court at Bangalore in Writ Petition No. 777 of 1961.

C *V. K. Krishna Menon, M. Veerappa* and *S. P. Singh*, for the appellant.

R. B. Datar and *M. L. Verma*, for the respondent.

The Judgment of the Court was delivered by—

ALAGIRISWAMI, J.—The respondent's ancestors had been granted a cash allowance called Tainat by the Peshwas. After the defeat of the Peshwas by the British, by the Treaty of Gulgallee with Jamkhandi dated 6-6-1819 by the Hon'ble Mr. Elphinston, Governor of Bombay on behalf of the East India Company one of the terms which were granted to Gopalrao Jamkhandikar was regarding the terms which he held from the Government of His Highness the Peshwa, for the payment of his contingent (apparently army) of his personal allowance. It stated that he was to continue all allowances and no complaints on this head were to be suffered to reach the Government (East India Company). The allowance to respondent's ancestors was one such allowance. This allowance seems to have amounted to a sum of Rs. 2010/- minus a sum of Rs. 240/- being the commutation amount as shown in Petha Khata Wahi Extract of 1942-43. That exact also shows that this grant was permanent. But in 1944 the then ruler of Jamkhandi seems to have converted this allowance to one for life. After the Jamkhandi State was merged in the State of Bombay, the Bombay Legislature passed the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. The respondent filed an application on 21-7-1956 under s. 17 of that act before the Assistant Commissioner, Jamkhandi claiming that the cash allowance payable was both permanent and hereditary but that he learnt that the ruler of Jamkhandi had passed an order that the said cash allowance be continued till his (applicant's) life time when the same was continued to him after the death of his father. He mentioned that he had moved the Rajasaheb by an application which was not finally disposed of. He, therefore, claimed that he would be entitled to Rs. 21,000/- at 7 times of the cash allowance on the basis that it was Rs. 3,000/- a year and permanent or in the alternative to Rs. 9,000/- being three times the cash allowance on the basis that it was payable for life. It would be appreciated that by this time the Ruler of Jamkhandi was no longer a Ruler and was certainly not in a posi-

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tion to be of any assistance to the respondent on the basis of his application. The Assistant Commissioner passed an order granting a sum of Rs. 5172-12-0 being three times the annual sum of Rs. 1724-4-0 which the respondent was receiving. The respondent then filed an appeal to the Mysore Revenue Appellate Tribunal as by that time the area had become part of the Mysore State. In that appeal he mentioned that through mistake his name has been recorded as holder of the Tainat cash allowance for life only. He also mentioned that his application to the Rajasaheb of Jamkhandi for correction of the mistake was still pending even though the state of Jamkhandi was merged. The Tribunal dealt with the argument before it on behalf of the respondent to the effect that the ruler of Jamkhandi had no power to change the cash allowance to one for life as according to his own earlier order passed in the year 1909-10 it was permanent and in the view that the ruler of Jamkhandi had sovereign powers and was the fountain head of all source of authority, that is, executive, judiciary and legislature, he could change the Tainat cash allowance at his sweet will and pleasure, dismissed the appeal. The respondent thereupon filed a writ petition No. 777 before the High Court of Mysore. There also he stated that through mistake his name was recorded as the holder of the cash allowance for life only, and also urged that the ruler of the Jamkhandi State had no power to interfere with the Tainat cash allowance. The High Court did not deal with the question whether the Ruler of Jamkhandi had, in 1944, the power to convert a hereditary grant to one for life but directed that a sum of Rs. 14,070 being seven times the annual cash allowance of Rs. 2,010 be paid to the respondent on the basis that the grant was hereditary. This appeal is against that judgment and order of the High Court.

We are of opinion that clearly the decision of the Mysore High Court is wrong. In *Ameer-un-Nissa Begum* v. *Mahboob Begum* (AIR 1955 SC 352) this Court stated the constitutional position of the Nizam of Hyderabad in these words :

> "....It cannot be dispute that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law;—nay, they would override all other laws which were in conflict with them. So, long as a particular 'Fireman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed.
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> The Nizam was not only the supreme legislature, he was the fountain of justice as well. When he constituted a new Court, he could, according to ordinary notions, be deemed to have exercised his legislative authority. When again he

A affirmed or reversed a judicial decision, that may appropriately be described as a judicial act. A rigid line of demarcation, however, between the one and the other would from the very nature of things be not justified or even possible."

That sets out the constitutional position of the ruler of every of the
B Indian States before their integration with the rest of India and coming into force of the Constitution of India. It follows therefore that if the ruler of Jamkhandi had changed the permanent cash allowance granted to the respondens's ancestors to one for life it is legally valid and it cannot be questioned. The extract from the Jamkhandi State Gazette dated 7-8-1920 publishing rules regarding cash allowance itself shows that those rules cancelled the earlier rules and those rules
C also could be appropriately cancelled by the subsequent rules. Any application made by the respondent to the former ruler of Jamkhandi after the State was merged in Bombay State will not help him. The ruler had by that time lost all his powers. The decision of the Mysore Revenue Appellate Tribunal is, therefore, right.

There is only one small point which has got to be mentioned. The
D compensation allowed was three times the cash allowance. As already mentioned the Petha Khata Wahi extract shows the allowance at Rs. 2010.00 minus Rs. 240.00 being the commutation amount. These allowances being service allowances, the deduction is for the payment to the person who was doing the service in place of the cash allowance holder. That is why what was being paid to the respondent year after year was the cash allowance minus commutation amount. The
E Mysore High Court was, therefore, wrong in holding that this sum of Rs. 240 cannot be deducted from the cash allowance while calculating the compensation payable to the respondent.

We must mention that when this appeal was taken up for hearing Mr. Datar appearing for the respondent contended that as this Court in *M.P. State* v. *Ranojirao* (1968 3 SCR 489) has held that the Madh-
F ya Pradesh Abolition of Cash Grants Act violates Art. 19(1)(f) or Art. 31(2) of the Constitution, and so struck it down, the Bombay Merged Territories Miscellaneous Alienation Abolition Act is also liable to be struck down on the same ground. He, therefore, wanted that he should be given the liberty to move the High Court for striking down the Act under consideration in this case. We do not propose
G to express any opinion as to whether it would be open him to do so in the background of this case. There is nothing to prevent him from filing an application if he is so advised.

In the result this appeal is allowed and the judgment and order of the High Court of Mysore set aside. As the special leave was granted on the condition that the appellant would in any event pay to the res-
H pondent his of the appeal, the appellant shall pay the respondent's costs.

S.B.W. *Appeal allowed.*