

A

RANI INDER KUMARI ETC. ETC.

v.

STATE OF RAJASTHAN &amp; ANR.

February 25, 1975

[K. K. MATHEW, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

B

*Rajasthan Cash Jagirs Abolition Act, 1958—S. 3 Constitutional validity of—Delay in approaching the Court—Effect of.*

By s. 3 of the Rajasthan Cash Jagirs Abolition Act, 1958 all cash jagirs sanctioned to the former princes were abolished. Sub-s. (2) of s. 3 provided for payment of compensation. The petitioners received compensation from 1958 to 1970. In 1970, however, they questioned the validity of s. 3 on the ground that it is violative of articles 31 and 19(1)(f) of the Constitution.

C

Dismissing the petitions.

HELD: The petitioners have approached the court after inordinate delay and even then after enjoying the full benefit under the Act. The petitioners cannot be allowed to blow hot and cold in the same breath. Right to the compensation, of whatever nature or content, flowed from the abolition of the cash jagirs under the Act and acceptance of compensation gave a quietus to the claim to have the Act adjudged as *ultra vires*. The foundation of the compensation was the abolition of cash jagirs. [707G; F]

D

*State of Madhya Pradesh v. Ranojirao Shinde & Anr.* [1968] 3 S.C.R. 489, distinguished.

ORIGINAL JURISDICTION: Writ Petitions Nos. 610 to 614 of 1970.

Petitions under Art. 32 of the Constitution of India.

E

*Mohan Behari Lal*, for the petitioners.*L. M. Singhvi* and *S. M. Jain*, for the respondents.

The Judgment of the Court was delivered by

F

GOSWAMI, J.—By the above Writ Petitions the constitutional validity of the Rajasthan Cash Jagirs Abolition Act, 1958 (Act No. 29 of 1958) is challenged as violative of the petitioners' fundamental rights under articles 14, 19(1)(f) and 31 of the Constitution.

G

The facts of Writ Petition No. 610 of 1970 may alone be sufficient. The petitioner states that in view of the near relationship as well as in lieu of her husband's share in the parental jagir of Riri the Maharaja of Bikaner sanctioned a separate cash grant to her husband, Maharaj Chander Singh ji, of Rs. 1200/- per annum on May 23, 1942. This amount was continuously paid to her husband by the State of Bikaner and was later raised to Rs. 2400/- per annum with effect from February 2, 1943. This grant of Rs. 2400/- with an addition of Rs. 600/- as dearness allowance was shared between her and her husband under the order of the Prime Minister of Bikaner State dated September 18, 1942. This payment of Rs. 1500/- per annum was continued to be received by the petitioner through Bikaner Treasury upto the formation of the State of Rajasthan, on April 7, 1949. After the death of her husband on May 6, 1951, the payment

H

of her grant was continued. The State of Rajasthan being the successor to the former Bikaner State recognised this grant and continued to make payment to the petitioner. It appears that after the death of her husband it was decided in December 1953 that no payment should be made to her thereafter and the regular payments received by her after the death of her husband would not be recovered. On the petitioner's representation, however, the grant was restored and was allowed to continue till its discontinuance by the act of the legislature. Annexure 'C' to the petition shows the order of the Accountant General of Rajasthan to the Treasury Officer, Bikaner, conveying the sanction of the Governor for the continuance of the grant of Rs. 125/- per month to the petitioner from the date the same had been discontinued "till the cash jagirs are resumed". This order is dated June 5, 1958.

The Rajasthan Cash Jagirs Abolition Act, 1958 (briefly the Act) received the assent of the President on July 13, 1958.

Section 2(a) of the Act defines cash jagir to mean "any grant of money by way of jagir or otherwise, made or recognised to have been made by the Government in any part of the State or by the Ruler of a convenanting State without any consideration or in lieu of jagir resumed or abolished otherwise than under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952....."

Section 3 which provides for abolition of cash jagirs reads thus :

3(1) "Notwithstanding anything to the contrary contained in any law, sanad, order, custom or usage in force in any part of the State, all payments of money on account of cash jagirs to which this Act applies, that were being made or enforced at the commencement of this Act, shall be discontinued on and from the 1st day of April, 1958 and all such cash jagirs shall stand abolished as from that day.

(2) Notwithstanding such discontinuance and abolition the State Government shall continue to make payments by way of compensation in accordance with scale laid down in the Second Schedule, and the provisions of the Rajasthan Pensions Act, 1958, shall apply to such payments".

The Second Schedule shows, *inter alia*, that if the monthly rate of the grant exceeds Rs. 50/- but does not exceed Rs. 250/- the grantee will be paid the compensation for a period of twelve years from the 1st day of April, 1958.

Section 6(2), which is also under attack, provides that "nothing in this Act or in the rules made there-under shall affect such other grants of money as the State Government may, from time to time, by notification in the Official Gazette, declare to be exempt from the provisions of this Act, and the provisions of the Rajasthan Pensions Act, 1958, shall apply to such exempted grants of money".

A It is contended on behalf of the petitioners that section 3 of the Act is violative of articles 31 and 19(1)(f) of the Constitution and section 6(2) is violative of article 14 of the Constitution. According to the petitioners their cases are covered by a decision of this Court in *State of Madhya Pradesh v. Ranojirao Shinde & Anr.*,<sup>(1)</sup> where this Court held the Madhya Pradesh Abolition of Cash Grants Act, 1963, to be violative of article 31(2) or in the alternative of article 19(1)(f) of the Constitution.

B Before we proceed further we have to state that the petitioners have an insurmountable obstacle to get over in these petitions. In Madhya Pradesh case (supra) the petitioners therein approached the High Court soon after the promulgation of the particular Act in 1963 and the High Court accepted their contention that the Act was *ultra vires* of article 19(1)(f) of the Constitution and was not saved by sub-article (5) thereof. The State of Madhya Pradesh appeared to this Court by a certificate obtained from the High Court under article 133(1)(c) and this Court in the above mentioned decision dismissed the State's appeals. In the present case the petitioners took advantage of the provisions of the Act, particularly sub-section (2) of section 3 by which payments by way of compensation were allowed notwithstanding the abolition of the grant under sub-section (1) of section 3. So far as the abolition of the cash jagirs was concerned it was complete on and from the 1st day of April, 1958 under sub-section (1) of section 3 of the Act. The petitioners had been in enjoyment of the compensation in accordance with the scale laid down in the Second Schedule from the inception of the Act which abolished the cash jagirs on and from 1st April, 1958, till 31st March, 1970, and approached this Court under article 32 of the Constitution on October 12, 1970, when under sub-section (2) of section 3 the compensation was discontinued.

The petitioners cannot be allowed to blow hot and cold in the same breath. Right to the compensation, of whatever nature or content, flowed from the abolition of the cash jagirs under the Act. Acceptance of the compensation under the Act for the full length of the period of twelve years completely negatives the scope of attack upon the abolition of the grant. The foundation of the compensation is the abolition of the cash jagirs. Section 3(2) under which the compensation is available is integrally connected with section 3(1) which has abolished the cash jagirs from a specified date and it is only on such abolition that compensation is rendered possible. Acceptance of compensation, therefore, gives a quietus to the claim to have the Act adjudged as *ultra vires*. The petitioners cannot eat a cake and have it. At any rate the petitioners have approached the court after inordinate delay and even then after enjoying the full benefit under the Act. The petitions, therefore, cannot be entertained.

H The petitioners also contend that section 6(2) of the Act is discriminatory and is violative of the equality clause under article 14 of the Constitution. Section 6 is a saving provision. The case of the

(1) [1968] 3 S.C. R. 489.

petitioners is that a good number of persons have been exempted from the operation of the abolition of the grant. It is submitted that while under section 6(1) there is guidance with regard to the exemption, there is none whatsoever under section 6(2). Whatever the merit of this submission, the petitioners are not going to be benefited by striking down section 6(2) of the Act. Assuming it is *ultra vires*, section 6(2) is clearly severable from the rest of the provisions. On the other hand, depending upon this provision, the petitioners may be able to receive appropriate consideration from the Government to be included in the list of exemptees. Indeed,, Dr. Singhvi, the learned Advocate General, gave us to understand that he would himself recommend the case of three of the petitioners as deserving consideration under section 6(2). We do not know whether the other two petitioners may also be able to convince the Government about the merit of their case for equal consideration. We assume that under these provisions the Government has certain principles on which it acts to give relief to the needy. It is, therefore, idle for the petitioners to have a decision from this Court to strike down a provision which may ultimately be to their aid. We are not, therefore, inclined to pass on this submission advanced by the petitioners. In the result the petitions fail and are dismissed, but in the entire circumstances of the case the parties will bear their own costs.

P.B.R.

*Petition dismissed.*