SARWARLAL AND OTHERS

v.

THE STATE OF HYDERABAD

1960

March 16.

(B. P. SINHA, C. J., JAFER IMAM, A. K. SARKAR, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Jagir, Abolition of—Regulations promulgated by Military Governor and Prime Minister—Constitutional validity—Delegation of authority by Nizam—Nature and extent—Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli, s. 6(4)—Hyderabad Jagir, (Commutation) Regulation (XXV of 1359 Fasli) s. 4(1)(c), 4(2)—Constitution of India, Art. 32(B).

After the Police action in the State of Hyderabad in August, 1948, the Nizam, by a Farman dated September 19, 1948, invested the Military Governor "with all authority for the administration of the State" and by a later Farman declared that "the said authority includes and has always included authority to make Regulations." By virtue of the said powers, the Military Governor promulgated the Hyderabad (Abolition of Jagirs) Regulations of 1358 Fasli. Thereafter on the termination of the appointment of the Military Governor, the Nizam by another Farman appointed Mr. Vellodi as his Chief Minister and directed that "all the powers of administration, vested in the Military Governor before the said date are exercisable by the Chief Minister." Thus empowered, the Chief Minister promulgated the Hyderabad Jagirs (Commutation) Regulation XXV of 1358 Fasli. Thereafter with the commencement of the Constitution of India, the territory of the State of Hyderabad became part of the Union of India and the President certified the two Regulations under Art. 31(6) of the Constitution. By the Constitution (First Amendment) Act of 1951, Arts. 31(A) and 31(B) and Sch. IX were inserted into the Constitution and the two Regulations were included in the said schedule. The appellant, whose properties had been taken over by the Jagir Administrator under the Abolition Regulation, and who had, in the meantime, filed a writ petition in the High Court, by his amended petition after the amendment of the Constitution, claimed that ss. 4(1)(c) and 4(2) of the Commutation Regulation and s. 6(4) of the Abolition Regulation were confiscatory in nature and amounted to colourable and fraudulent exercise of legislative power. The High Court found against him and rejected his petition:

Held, that the decision of the High Court must be affirmed.

There can be no question that the Nizam, at the time when he executed the Farmans and prior to it, was an absolute ruler vested with all authority executive, legislative and judicial and had unquestionable powers to modify or extinguish any of the rights of his subjects and the language of the Farmans leaves no manner of doubt that he thereby delegated the entirety

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of his authority and powers to the Military Governor and thereafter to the Prime Minister.

The doctrine of invalidity of legislation enacted in colourable exercise of legislative authority can apply only where the legislature is subject to constitutional restrictions. But where the powers of the legislature suffers from no limitations, constitutional or otherwise, that doctrine can have no application.

No question of infringement of fundamental rights could arise as (i) the impugned Regulations were pre-Constitution legislations and the appellant's rights had already been determined before the Constitution, (ii) Art. 32(B) of the Constitution exempts the Regulations from such a challenge.

Keshavan Madhava Menon v. *State of Bombay* [1951] S.C.R. 228, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 392 of 1956 & 686 of 1957.

Appeals from the judgment and order dated March 31, 1954, of the former Hyderabad High Court in Civil Writ Nos. 43 and 44 of 1951 respectively.

S. P. Varma, S. Mohammed and *S. R. Borgaouker*, for the appellants in both the appeals.

A. V. Viswanatha Sastri, T. V. R. Tatachari and *T. M. Sen*, for the respondents in both the appeals.

Civil Appeal No. 392 of 1956.

1960. March 16. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—This is an appeal filed with a certificate granted under Art. 133(1)(c) of the Constitution by the High Court of Judicature of the State of Hyderabad.

The appellant was a Jagirdar holding jagirs Ramwarm Chandam Palli and Gulla Palli, Taluq Sirsalla, in the District of Karimnagar in the State of Hyderabad. After the Police Action in August, 1948, Major General Chaudary was appointed the Military Governor for the State of Hyderabad. His Exalted Highness the Nizam of Hyderabad invested the Military Governor with authority to administer the State by a Farman dated September 19, 1948. The Farman was in the following terms:

"Whereas the General Officer Commanding in Chief Southern Army has appointed Major General J. N. Chaudary, O.B.E., to be the Military Governor for the Hyderabad State and whereas all authority

for the administration of the State now vests in him, I hereby enjoin all the subjects of the State to carry out such orders as he may deem fit to issue from time to time. I appeal to all officers of the State administration and subjects of the State to render faithful and unflinching obedience to the Military Governor and conduct themselves in a manner calculated to bring about the speedy restoration of law and order in the State".

On August 7, 1949, His Exalted Highness the Nizam issued an explanatory Farman in the following terms:

"With reference to my Farman dated 19-9-1948, in which I referred to the fact that all authority for the administration of the State now vests in the Military Governor, I hereby declare that the said authority includes and has always included authority to make Regulations".

On August 10, 1949, the Military Governor promulgated The Hyderabad (Abolition of Jagirs) Regulation of 1358 Fasli, which will hereinafter be referred to as the Abolition Regulation. This Regulation was brought into force on August 15, 1949, the date of its publication in the Official Gazette. Section 5 of the Regulation directed that from a date to be notified for the transfer of the administrations of the jagirs in the State to the Government, the jagirdars shall make over the management of the jagirs to the Jagir Administrator and in default of compliance therewith the Officer appointed under the Regulation may take forcible possession. By s. 6, it was provided that the jagirs shall be included in the "Diwani" and unless and until included in a district, shall be administered by the Jagir Administrator, and that the powers, rights and liabilities in relation to such jagirs shall cease to be exercisable by the jagirdars and shall be exercisable by the Jagir Administrators, and that no jagirdar shall recover or receive any customary or other dues from any tenant or resident of the jagir. By s. 14, it was declared that the jagirdars were to receive certain interim maintenance allowances until such time as the terms of the commutation of the jagirs were determined. Pursuant to the authority reserved by s. 6 of the Abolition Regulation, possession

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of the jagirs was taken over sometime in September 1949 by the Jagir Administrator acting on behalf of the State of Hyderabad.

On December 1, 1949, another Farman was issued by His Exalted Highness the Nizam which provided as follows:

> "Whereas the General Officer Commanding in Chief Southern Army has as from the 1st December, 1949, terminated the appointment of Major General Chaudary, O.B.E., to be the Military Governor for the Hyderabad State;
>
> And whereas it is necessary to make other arrangements for the administration of the State as from the said date;
>
> Now, therefore, I hereby appoint as from the said date Mr. M. K. Vellodi, C.I.E., I.C.S., to be my Chief Minister and . . . I further direct that all the powers of administration, vested in the Military Governor before the said date are exercisable by the Chief Minister".

In exercise of the powers vested in him, the Chief Minister promulgated the Hyderabad Jagirs (Commutation) Regulation No. XXV of 1359 Fasli—which will hereinafter be referred to as the Commutation Regulation. This Regulation was brought into operation on January 25, 1950. By s. 3 of the Regulation, the method of computing the commutation sum for every jagir was prescribed.

After the inauguration of the Constitution of India on January 26, 1950, on which date the territory of the State of Hyderabad became part of the Union of India, the President on April 25, 1950, certified the two Regulations under Art. 31(6) of the Constitution by a notification published in the gazette of the Union of India. The Constitution was amended on June 18, 1951 by the Constitution (First Amendment) Act of 1951 whereby, inter alia, Arts. 31(A) and 31(B) and Sch. IX were incorporated in the Constitution. The Abolition Regulation and the Commutation Regulation were included in Schedule IX and by virtue of Art. 31(B), neither the Regulations nor any of the provisions thereof were to be deemed to be void or ever to have become void on the ground that the

Regulations were inconsistent with or took away or abridged any of the rights conferred by any of the provisions of Part III of the Constitution. In the meantime, the appellant had, on January 29, 1951, filed a petition in the High Court of Hyderabad for a writ in the nature of mandamus directing the State of Hyderabad and the Jagir Administrator to hand over possession of the appellant's properties and for an order declaring the Abolition Regulation and the Commutation Regulation ultra vires and unconstitutional and for certain interim orders. After the amendment of the Constitution, the petition was amended on August 14, 1952. By this petition, the appellant claimed that ss. 4(1)(c) and 4(2) of the Commutation Regulation and s. 6(4) of the Abolition Regulation were invalid because by these provisions, there was " naked confiscation of the property " of the appellant and that they amounted to " colourable and fraudulent exercise of legislative power ". The High Court of Hyderabad rejected the petition filed by the appellant, but certified the case under Art. 133(1)(c) as a fit one for appeal to this court.

In this appeal, two principal contentions fall to be determined, viz., (1) whether legislative authority was conferred upon the Military Governor by the Farman dated September 19, 1948 and (2) If, by the Farman, legislative authority was delegated to the Military Governor, whether it was circumscribed by any limitations or reservations.

Was the Military Governor, by the Farman dated September 19, 1948, invested with all the sovereign authority legislative, executive and judicial of H.E.H. the Nizam or was he merely invested with the executive authority ? By the plain words used in the Farman, " all authority for the administration of the State was conferred upon the Military Governor" and there is nothing in the text of the Farman which warrants the view that only executive authority was intended to be delegated thereby. Within the expression, " all administrative authority " is encompassed the entirety of the authority of the sovereign, and by the delegation from His Exalted Highness the Nizam, the Military Governor was invested with that authority

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in all its amplitude. The injunction to the subjects of the State to carry out all such orders as the Military Governor may deem fit to issue and the appeal to the officers of the State and the subjects to render faithful and unflinching obedience and to conduct themselves in a manner calculated to bring about the speedy restoration of law and order, do not detract from the amplitude of the powers delegated to the Military Governor. The expression, "orders" would include every order made in exercise of authority for the administration of the State; and the object intended to be achieved, viz., the speedy restoration of law and order in the State by His Exalted Highness the Nizam as expressed in the appeal was not restrictive of that authority. That His Exalted Highness the Nizam in and before the month of September, 1948, was an absolute ruler invested with all authority, executive, legislative and judicial is indisputable. He had supreme powers vested in him to modify, restrict take away or extinguish the rights of any of his subjects and the validity of his actions or orders was not liable to be questioned before any tribunal or authority.

The Farman promulgated on September 19, 1948, by His Exalted Highness the Nizam delegated his sovereign authority to the Military Governor and to remove all doubts as to the effect of that delegation, an explanatory Farman dated August 7, 1949, was issued. It was declared in express terms by that Farman that the authority of the Military Governor "included and has always included the authority to make Regulations". In the clearest terms, the author of the Farman proclaimed the content of the authority delegated by him to the Military Governor.

The plea rather faintly urged by Mr. Varma that the Farman merely recited that the Military Governor had been invested with authority for administration and did not by its own force purport to invest the Military Governor with authority to administer the State is plainly inconsistent with the argument which was advanced in the High Court and the statement of the case filed in this court and was therefore rightly abandoned by him.

Though by the delegation of authority, the Military Governor was invested with all authority of His Exalted Highness the Nizam in the matter of administration of the State in all its departments, the sovereignty of His Exalted Highness the Nizam was, by this act of delegation, undoubtedly not extinguished. It was open to him, notwithstanding the delegation, to issue orders or Regulations contrary to those which were issued by the Military Governor, and also to withdraw the authority of the Military Governor. There is, however, no evidence on the record to show that after September 19, 1948, and before the Abolition Regulation was promulgated, the authority of the Military Governor was withdrawn or that His Exalted Highness the Nizam had issued any order or Regulation inconsistent with the Abolition Regulation. The authority of the Military Governor was withdrawn in December, 1949, and the Chief Minister was invested with the same authority of administration including expressly the power of legislation, and it was in exercise of that authority that the Chief Minister issued the Commutation Regulation.

The authority of His Exalted Highness the Nizam as the sovereign ruler to resume the jagirs and to extinguish the interests of the jagirdars being by delegation vested in the Military Governor, the legality of the action of the latter was not open to challenge on any test of legislative competence. Assuming that no opportunity had arisen for exercise of the sovereign authority in the matter of resumption of jagirs or extinction of the jagirdars' interests before the promulgation of the Abolition Regulation, an inference cannot therefrom arise that His Exalted Highness the Nizam had irrevocably placed a restriction on his sovereignty, or that the delegation to the Military Governor of the sovereign authority was subject to an implied restriction that the interests of the jagirdars in the jagirs could not in exercise of the authority be extinguished.

The authority of the Military Governor, being unrestricted, so long as it enured, his action in issuing the Abolition Regulation could not be challenged on the plea that it was a colourable exercise of legislative

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authority. The doctrine of invalidity of legislative provisions enacted in colourable exercise of authority applies to legislatures whose powers are subject to constitutional restrictions. When such a legislative body seeks, under the guise or pretence of complying with the restrictions, in enacting a statute, to evade or elude them, it is but a fraud on the Constitution, and the statute is liable to be declared invalid on the ground that the enactment is in colourable exercise of authority, the statute being in truth beyond the competence of the body. But a statute enacted by a legislative authority whose powers are not fettered by any constitutional or other limitations, cannot be declared invalid as enacted in colourable exercise of its powers.

The authority of the Chief Minister under the Farman dated December 1, 1949, in its amplitude, was as extensive as that of His Exalted Highness the Nizam and the Commutation Regulation was not liable to be challenged on the ground of want of legislative competence or colourable exercise of legislative authority, the power exercised by him being the legislative power as the delegate of the Sovereign.

The plea that the fundamental rights of the appellant under the Constitution were infringed by the two Regulations does not require any detailed examination. By virtue of the Abolition Regulation, the rights of the appellant as a jagirdar in his jagir were extinguished and by the Commutation Regulation, the quantum of compensation payable to him was determined by a pre-Constitution legislation. The Regulations were competently promulgated in exercise of legislative authority in that behalf; and the Constitution does not operate retrospectively to revive the rights which had been, before it was enacted, extinguished. The Constitution has, except as otherwise expressly provided, no retrospective operation: *Keshavan Madhava Menon* v. *State of Bombay* (1); and rights which were by legislation extinguished, before it was enacted, are not revived thereby. At the commencement of the Constitution, the appellant had, therefore, no rights in the jagirs and he, obviously, could not claim a writ of mandamus directing

(1) [1951] S.C.R. 228.

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delivery of possession of the jagir, or a writ directing commutation otherwise than under the provisions of the Commutation Regulation. It may also be observed that the Parliament has, by the Constitution (1st Amendment) Act, included the Abolition and the Commutation Regulations in the ninth schedule, and by virtue of Art. 31(B), the two Regulations are exempt from challenge on the ground that they are inconsistent with or take away or abridge any of the fundamental rights conferred by Part III of the Constitution.

The appeal therefore fails and is dismissed with costs.

Civil Appeal No. 686 of 1957.

This appeal raises the same question which has been decided in the companion Appeal No. 392 of 1956 and for reasons set out therein, this appeal must fail and is dismissed with costs.

Appeals dismissed.

JAIKRISHNADAS MANOHARDAS DESAI AND ANOTHER

v.

THE STATE OF BOMBAY

1960

March 16.

(JAFER IMAM, K. N. WANCHOO and J. C. SHAH, JJ.)

Criminal Breach of Trust—Ingredients of—Common intention—Meaning of—Indian Penal Code (XLV of 1860), ss. 409, 34.

The first appellant was the Managing Director and the second appellant a Director and technical expert of a cloth dyeing concern known as Parikh Dyeing and Printing Mills Ltd. The company entered into a contract with the Textile Commissioner undertaking to dye a large quantity of cloth which was supplied to the company for that purpose. In pursuance of the contract certain quantity of cloth was dyed and delivered to the Textile Commissioner by the company but it failed to dye and deliver the balance of cloth which remained in its possession and was not returned to the Textile Commissioner in spite of repeated demands. Ultimately the two appellants were prosecuted for criminal breach of trust under s. 409 read with s. 34 of the Indian Penal Code and were convicted for the same in a trial by jury.