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UNION OF INDIA
v
PRINCE MUFFAKAM JAH AND ORS.

OCTOBER 20, 1994

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[M.N. VENKATACHALIAH, CJI, S. MOHAN
AND DR. A.S. ANAND, JJ.]

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Arbitration Act, 1940—Section 15/16—Dispute relating to jewels belonging to two trusts—Arbitration Award—Validity of—Petition u/s 15/16—Application for interpretation—No public interest involved—Intervenor signed reference and participated throughout in arbitration proceedings—Intervention Application misconceived and devoid of merit.

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Constitution of India—Article 363—Merger Agreement dated 25th January 1950—Dispute arising out of—Jurisdiction of Courts.

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The main dispute related to the jewels belonging to the two trusts. The dispute was referred to arbitration. There was a divergence of opinion between the two arbitrators and the matter was referred to the umpire. The Award was submitted to this Court for appropriate orders. The Union of India filed a petition u/s 15/16 of the Arbitration Act, 1940, questioning the validity and correctness of the Award. The trustees also filed a petition u/s 15/16 of the Act. Pending adjudication of these interlocutory applications the present application for intervention had been filed seeking to restrain the Union of India from making any payment of the amount to the Nizam of Hyderabad for the purchase of the Jacob Diamond and other priceless jewels which, according to him, were State property, to appoint commission to investigate into the true ownership of those jewels claimed to be the private property of the Nizam of Hyderabad, declare the Jacob Diamond as private property of Nizam of Hyderabad as State property and declare the priceless jewels as regalia and antiquities and art treasures.

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The intervenors claiming to be public-spirited citizens urged that there was a clear conceptual division between the Nizam's personal and private property and the State property. The Jacob Diamond which the Union of India was offering to purchase was the property of the State of Hyderabad and, thus, of the nation and not the personal property of the

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Nizam of Hyderabad. There were other priceless jewels which constituted regalia and, therefore, they were State Jewels. The sons and successors of Nizam could not claim such Regalia as the private property merely because they were inherited as heirlooms. Most of the priceless jewels of the Nizam were antiquities and were treasures in view of their being over hundred years old as such were the priceless remains of nation's cultural heritage and were entitled to protection and preservation for the benefit of the nation and its citizens.

In the counter affidavit filed on behalf of Trust, preliminary objection was taken that the application for intervention was motivated and misconceived and the reliefs sought for by the intervenors fell outside the purview of the jurisdiction of this Court in view of the provisions of Article 363 of the Constitution of India. It was stated that the application contained gross misrepresentation. In fact, identical contentions regarding the ownership were taken by the Union of India when Intervenor was closely involved with and participated in the arbitration proceedings. These contentions were dismissed by the Court on two occasions as well as by the Umpire. Ownership of the items of jewellery of the trusts was questioned by the Union of India even in the objections filed against the Award. A white paper was also drawn up and presented to parliament. Therefore, according to the Trust it was not open to any one now to raise dispute on the ownership. If, at all, the dispute could be raised only by the Ruler.

Dismissing the application, this Court

HELD : 1.1. The applicants had no *locus standi* to seek intervention, that too; at this belated stage. Besides, there was no public interest involved. Intervenor No. 4 as early as in 1991, in his capacity as Director General, National Museum, not only signed the reference but participated throughout the arbitration proceedings. The case of the applicants that the various items of the jewellery constituted the private property of the Nizam was without merit. In fact, there were applications by Union of India raising the same issue. Those applications were dismissed. Before the Umpire also an application was filed raising the contention that these items of jewellery had vested in the State and had become the property of the nation. The Nizam had no power or authority to include them in the deeds of Trusts executed by him and the question of buying these items of

A jewellery which, in fact, belonged to the State could not and did not rise, as the Union could not possibly buy its own property. [588-G-H, 589-A]

B 1.2 Article 363 bars the jurisdiction of all the Courts in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State. [590-D]

Madhav Rao Scindia and others v. Union of India, [1971] 1 SCC 85, relied on.

C CIVIL ORIGINAL JURISDICTION : I.A. No. 10 of 1993.

IN

Writ Petition (c) No. 1429 of 1979.

D (Under Article 32 of the Constitution of India.)

Dipankar P. Gupta, Solicitor General and G.L. Sanghi, S. Sukumaran, Manmohan, Mrs. A.K. Verma for JBD & Co., P. Parmeshwaran, C. V. Subba Rao, U.A. Rana, Om Prakash Verma and Mrs. Manik Karanjawala for the appearing parties.

E The following Order of the Court was delivered :

MOHAN, J. By this Intervention Application the intervenors seek to:

F (i) restrain the Union of India from making any payment of the amount of Rs. 180 crores to the Nizam of Hyderabad for the purchase of the Jacob Diamond and other priceless jewels which, according to him, are State property;

G (ii) in the alternative to direct the recipients of the said sum of Rs. 180 crores to deposit in a separate Bank account or in fixed deposit;

H (iii) to appoint a Commission to investigate into the true ownership of the Jacob Diamond and the other priceless jewels claimed to be the private property of the Nizam of Hyderabad, and if found to be State property the Union of India should acquire and take

possession of the same without any payment whatsoever;

(iv) declare the Jacob Diamond as private property of Nizam of Hyderabad, as State property;

(v) declare the priceless jewels as Regalia and antiquities and art treasures.

The main dispute relates to the jewels belonging to the two Trusts, namely, HEH The Nizam's Jewellery Trust and HEH the Nizam's Supplementary Jewellery Trust. The writ petitions and the connected civil appeals were disposed of by an order dated 25th April, 1989 referring the same to arbitration. There was a divergence of opinion between the two arbitrators and the matter was referred to Mr. Justice A.N. Sen as the Umpire. He rendered an Award that the Government of India would pay a sum of Rs. 225,37,33,959. This amount was reduced by Rs. 45 crores since there was a typographical error with reference to Item 33 of the Schedule of valuation of the Award. As a result, the liability of the Union of India to purchase 173 items of jewellery comprised in the two Trusts came to Rs. 180,37,33,959.

The Award dated 27.7.1991, was submitted to this Court for appropriate orders. The parties had the notice of the filing of the Award. The award was not implemented and the Union of India, filed I.A. No. 8 of 1991 on 29.8.1991, being a petition under Section 15/16 of the Arbitration Act, 1940, questioning the validity and correctness of the award. The following prayers were made in the said I.A.:

"(i) Set aside the Award of the Ld. Umpire dated 27th July, 1991 and remit the same back to him for a fresh determination of the values;

(ii) Stay the operation of the Award of the Ld. Umpire till the disposal of this Petition."

The Trustees also filed a petition under Sections 15/16 of the Arbitration Act, 1940, being I.A. No. 9 of 1991 on 6.9. 1991. Relief prayed for in the said I.A. is reproduced *Inter alia* :

"Remit the Award of the Hon'ble Umpire dated 27th July, 1991 for reconsideration under Section 16 of the Arbitration Act on the

A grounds submitted herein;

B Pending adjudication of these interlocutory applications the present application for intervention, being I.A. No. 10 of 1993, has been preferred on August 10, 1993 praying for the grant of relief as extracted above. By an order of this Court dated 10.2.1994 the said application was dismissed stating that the reasons would be recorded and furnished later. We here below give the reasons;

C The intervenors claiming to be public-spirited citizens would urge that there was a clear conceptual division between the Nizam's personal and private property and the State property. The Jacob Diamond which the Union of India is offering to purchase is the property of the State of Hyderabad and, thus, of the nation and not the personal property of the Nizam of Hyderabad. In support of this statement, certain documents are relied on.

D There are other priceless jewels which constitute Regalia and, therefore, they are State jewels. The sons and successors of Nizam cannot claim such Regalia as the private property merely because they were inherited as heirlooms. As a matter of fact, the Nizam requested the Central Board of Revenue to accord recognition to the articles or jewellery, as his heirloom under Wealth Tax of Heirloom Jewellery of Rulers) Rulers, 1958 for the purposes of clause (xiv) of sub-section (1) of Section 5 of the Wealth Tax Act, 1957. Notwithstanding the above, these items were illegally transferred and diverted to private Trusts created by him. Article II(3) of the merger agreement dated 25th January, 1950 clearly states, if any dispute arises as to whether any item of property is the private property of Nizam or the State property, it shall be referred to a person nominated by the Government of India, whose decision would be final and binding on all concerned.

G Besides, the Antiquities and Art Treasures Act, 1972 provides for the compulsory acquisition of these antiquities and art treasures for preservation in public places. Most of the priceless jewels of the Nizam are antiquities and are treasures in view of their being over hundred years old as such are the priceless remains of nation's cultural heritage and are entitled to protection and preservation for the benefit of the nation and its citizens.

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In the counter affidavit filed on behalf of the Secretary of HEH The Nizam's Jewellery Trust and one of the Trustees in the HEH Nizam's Supplementary Jewellery Trust, preliminary objections are taken that the application for intervention is motivated and misconceived. The applicants were neither parties in the writ petition nor did they participate in the arbitration proceedings. As such, they have no *locus standi* whatever.

The reliefs sought for by the intervenors fall outside the purview of the jurisdiction of this Court in view of the provisions of Article 363 of the Constitution of India.

The application contains gross misrepresentation. In fact, identical contentions regarding the ownership were taken by the Union of India when Intervenor No. 4, Dr. L.P. Sihare, was working as Director General, National Museum and was closely involved with and participated in the arbitration proceedings. These contentions were dismissed by the Court on two occasions as well as by the Umpire, Mr. Justice A.N. Sen, in his Award dated 27th July, 1991. Therefore, there are no materials on which this Court could come to a different conclusion. As far as the State of Hyderabad is concerned there was no Regalia. Ownership of the items of jewellery of the Trusts was questioned by the Union of India even in the objections filed against the Award. It was only after examination of all the relevant materials an offer was made to purchase items of jewellery, eventually, realising fully, after prolonged consideration, there was no force in such contentions. The claim, that the Jacob Diamond was property of the State, is untenable. On the contrary, the documentary evidence clearly shows that the Jacob Diamond was bought from the private funds of the Nizam. The letter dated 22nd September, 1897 from C.E. Crawaley, Comptroller General, Hyderabad State, enclosing a report on the payments to the Nizam for the years 1888-1892 sent to the British Resident at Hyderabad, T.C. Plowden, establishes the same. It categorically states that the Imperial/Jacob Diamond was bought from the private funds of the Nizam. A letter dated 2nd September, 1897 issued by the British Resident to the Foreign Department, Simla also confirms this position. At the time of integration of the States the Rulers were asked to submit the list of their private properties. After scrutiny and discussions by the Ministry of Home (States) with the erstwhile Rulers such declared properties were accepted considering the facts and circumstances of each Ruler. A white Paper was also drawn up and presented to Parliament. Therefore, it is not open to

A any one now to raise dispute on the ownership. Hence, this cannot be a matter of litigation any longer. Even otherwise, the litigation itself stands barred by constitutional provisions. The position of the Late Nizam was considered by this Court in several decisions. In *Ameerunnissa Begum v. Mehboob Begum and others*, reported in AIR 1955 SC 352 it was held that the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. To the same effect are the findings of this Court in *Director of Endowments v. Akram Ali*, AIR (1956) SC 60.

C If the Ruler had exercised sovereign power in his State and has set apart any property as private property no dispute can arise concerning the same. It has been so held in *Vishnu Pratap Singh v. State of M.P. and Others*, reported in [1990] Supp. SCC 43. To the same effect are observations of this Court in *Revathinnal Balagopala Verma v. His Highness Sri Padmanabhadasa Verma (since deceased) and Ors.*, JT (1991) SC 301.

D Two Trusts which govern the jewellery have been created with the approval of the Government of India. They have been validated by the Nizam's Trust Deeds Validation Act, 1950. Further, by letter dated 23rd of January, 1989, written by the Ministry of States to the Nizam, the Government of India have accepted the jewellery and other moveable property specified in the list furnished as the private property of the Nizam. E No doubt, the letter records that the acceptance is subject to Article II, sub-Article (3) of the Agreement. But, that does not mean the intervenors could raise a dispute. If, at all, the dispute could be raised only by the Ruler. The claim for exemption under the Wealth Tax Act has bearing on the issues. Therefore, it is prayed that the application may be dismissed.

F On a careful consideration of the above arguments, we are of the view that the applicants have no *locus standi* to seek intervention, that too, at this belated stage. Besides, there is no public interest involved. It also requires to be noted that Intervenor No. 4, Dr. L.P. Sihare, as early as 1991, in his capacity as Director General, National Museum, not only signed the reference but participated throughout the arbitration proceedings. G The case of the applicants that the various items of the jewellery constitute the private property of the Nizam is without merit. In fact, there were applications by Union of India raising the same issue. Those applications were dismissed.

H Before the Umpire also an application was filed raising the conten-

tion that these items of jewellery have vested in the State and have become the property of the nation. The Nizam had no power or authority to include them in the deeds of trusts executed by him and the question of buying these items of jewellery which, in fact, belonged to the State cannot and does not arise, as the Union cannot possibly buy its own property. The Umpire rejected the same by the following finding :

"The arbitration agreement proceeds clearly on the basis that all the items of jewellery comprised in the said two trusts belong to the said two Trusts and the Umpire must proceed on the basis of this arbitration agreement. The Umpire derives his jurisdiction, authority and power on the basis of the arbitration agreement entered into by the parties and the order passed by the Court and the umpire cannot sit in judgment over the same and cannot pass any order which will have the effect of modifying or altering or interfering with the arbitration agreement and the order passed by the Supreme Court on the basis thereof. Accordingly I hold that this application on behalf of the Union of India is not maintainable and must, therefore, be dismissed."

The White Paper on Indian States (revised edition of 3rd March, 1950) states as under :

"Settlement of Rulers Private Properties.....so far as their private properties are concerned, the Rulers were required to furnish by a specified date inventories of immovable property, securities and cash balances claimed by them as private property. The settlement of any dispute arising in respect of the properties claimed by a Ruler was to be by reference to an arbitrator appointed by the Government of India.

In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property owned by their respective States.

It also records that all questions relating to property were settled without recourse to arbitration."

The White Paper further records :

"By and large the inventories were settled by discussion between

A the representatives of the Ministry of States, the Ruler concerned and the representatives of the province or Union as the case may be. This method made it possible to settle these properties on an equitable basis within a remarkable short period and without recourse even in a single case to arbitration. The settlements thus made are final as between the States and the Rulers concerned. "

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The Merger Agreement dated 25th January, 1950 under Article II (3) states as follows :

C "If any dispute arises as to whether any item of property is the private property of His Exalted Highness the Nizam of Hyderabad or State property, it shall be referred to such independent person as the Government of India may nominate and the decision of that person shall be final and binding on all concerned. "

D Article 363 bars the jurisdiction of all the courts in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State.

E This Court while interpreting this Article in *Madhav Rao Scindia and Others v. Union of India*, [1971] 1 SCC 85 at page 191 states as follows :

F "But the Constituent Assembly did not want to open up the Pandora's box. Without Article 363, Article 362 would have opened the flood gates of litigation. The Constituent Assembly evidently wanted to avoid that situation. That appears to have been the main reason for enacting Article 363. Some of the Rulers who had entered into Merger Agreements were challenging the validity of those agreements, even before the draft of the Constitution was finalised. Some of them were contending that the agreements were taken from them by intimidation; some others were contending that there were blanks in the agreements signed by them and those blanks had been filled in without their knowledge and to their prejudice. The merger process went on hurriedly. The Constitution-makers could not have ignored the possibility of future challenge to the validity of the Merger Agreements. Naturally they would have been anxious to avoid challenge to various provisions in the Constitution which are directly linked with the Merger

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Agreements."

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Again, at page 248, this Court observed:

"That is why Article 363 really embodied the principles of Acts of State which regulated and guided the rights and obligations under the covenants or merger agreements by incorporating the doctrine of unenforceability of covenants or merger agreements coming into existence as Acts of State."

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This affords a complete answer to the contentions raised by the applicants. Hence, we conclude the intervention application is misconceived and is wholly devoid of merit.

A.G.

Petition disposed of.