

A MAHARAJA KUMAR KHARAK SINGH
(DEAD) THROUGH L.RS. ETC.

v.

STATE OF PUNJAB

B MAY 9, 1995

[KULDIP SINGH AND N. VENKATACHALA, JJ.]

C *Constitution of India—Article 363(1)—Bar to interference by courts—
Merger of State of Nabha—Covenant—Ruler or State of Nabha allowed state
property to vest in State of PEPSU—Private parties claiming Nabha's State
property—Suit for recovery of possession—Whether maintainable in an ordi-
nary Court of law—Held, no.*

D With the coming into force of the Indian Independence Act, 1947, the
State of Nabha along with other princely States in India got out of British
Paramountcy and become a free independent State. The Ruler of Nabha
and the Rulers of other States who desired to establish a Union of States
by the name of Patiala and East Punjab States Union (PEPSU), entered
into a covenant, according to which the territory of Nabha State ceased to
exist and became a part of the territory of the PEPSU. Subsequently, with
E the coming to force of the State Regulation Act, 1956, PEPSU, having got
merged in the State of Punjab, all its territory which include the territory
of Nabha State, became a part of the territory of the Punjab State.

F The appellants who were the brother of the then Ruler of erstwhile
of Nabha State, along after its accession to Indian Dominion and its
subsequent merger in PEPSU in State of Punjab, filed two original suits
for recovery of possession of 'Bir Bhadson' from the State of Punjab. The
cause of action for those suits was founded on a letter said to have been
addressed to the appellant G by the then Ruler of erstwhile Nabha State
giving grant of the 'Bir Bhadson' in favour of his two brothers, expressing
G therein his desire that the 'Bir' could be divided equally between him and
his brother.

H It was pleaded that both the appellants had become the grantees of
'Bir' acquiring title thereto and were, therefore, entitled to get possession
of the same from the State of Nabha before its merger in PEPSU and from
PEPSU after the merger of State of Nabha in it and from the State of

Punjab after the merger of PEPSU in it. Since both PEPSU and the State of Punjab did not give possession of the said 'Bir' to plaintiffs despite several requests made by them, the suit were being filed for recovery of possession of the same from the State of Punjab, the ultimate successor of State of Nabha, within a period of 12 years from the date of the letter. The suits were decreed. Appeals filed against the said decrees were allowed. The District Judge held that non-recognition of the rights of the plaintiffs in regard to the grant of land covered in the letter was in act of state and hence adjudication by a Municipal Court upon the correctness of such an act of State was beyond its competence. Consequently, it concluded that the grant was neither binding nor enforceable against the State. The plaintiffs filed appeals against the judgments and decrees made by the District Judge. The High Court dismissed them agreeing substantially with the findings of the District Judge. Hence these appeals.

Dismissing these appeals, this Court

Held : 1.1. The letter which was claimed by plaintiffs-appellants as grant of 'Bir' consisting of land and building - a State property of Nabha, made in their favour by its Ruler at the time in exercise of his sovereign power could not be construed as a grant of the Nabha State's property when the contents of that letter, which did not say that 'Bir' a state property of Nabha State sought to be given to Maharaja Gurbax Singh of Nabha by his brother, Maharaja Pratap Singh, was given as a grant, as the sovereign Ruler of Nabha State and when Maharaja Pratap Singh. P.W. 1, the author of the letter did not speak in support of such grant in his evidence. [158-G-H, 159-A]

1.2. The letter even if was assumed to constitute grant of 'Bir', the State property of Nabha State made by the then Ruler, in favour of his brother on April 25, 1948, as was held by courts below, that grant according to aforesaid categorical admission of the appellant was not accepted by him till he returned from America to India in November, 1948. Because of the non-acceptance of the grant of Bir, that 'Bir' continued to be the State property of Nabha State till May 8, 1948, when covenant for bringing into existence of State of PEPSU was signed and further upto August 20, 1948 when the State of Pepsu actually came into existence. [160-B]

1.3. The Articles of the covenant state that all the rights, authority and jurisdiction belonging to the Ruler, which appertain or was incidental

- A to the Government of Nabha State, also vested in the Union (PEPSU) and the same became exercisable thereafter only by Raj Pramukh of PEPSU as provided by the covenant; that all assets and liabilities of all the covenanting States including Nabha State, became the assets and liabilities of the Union; that all duties not obligations of the Ruler of Nabha State as was
- B the position of other Rulers of State concerned, pertaining or incidental to the Governments devolved on the State of PEPSU and was to be discharged by it. The Ruler of Nabha State, as was the position with Rulers of other States concerned, was entitled to full ownership, use and enjoyment of only his private properties, as distinct from State or public properties, belonging to him on the date of his making over the administration of that State to the Raj Pramukh on furnishing to the Raj Pramukh
- C before 20th day of September, 1948 an inventory of all the immovable properties, securities and cash balances held by him as such private property. If any dispute had to arise as to whether any item of property was the private property of the Ruler or State property, it was to be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned, provided that such dispute shall be so referable after the 30th June, 1949. [161-F-H, 162-A-C]
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14. When the claim for recovery of the possession of 'Bir' the right to possession of which was the Ruler of Nabha but was vested in the PEPSU, any claim to be made for such possession was with reference to such covenant, which in its entirety, was an act of State, and therefore, such claim could not be enforced by filing suits in an ordinary Civil Court of Law (Municipal Court). [163-D]
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- F *Dalmia Dadri Cement Ltd. Anr. v. Union of India and Anr.*, AIR (1958) SC 8160, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 316 of 1978 Etc.

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From the Judgment and Order dated 9.3.77 of the Punjab and Haryana High Court in R.S.A. No. 1457 of 1963.

- H A.K. Sen, M.C. Bhandare, S.K. Jain, A.P. Dhamija, Shailendra, H.K. Puri and Ranbir Yadav for G.K. Bansal for the Appearing parties.

The Judgment of the Court was delivered by

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VENKATACHALA, J. These Appeals are filed against the judgments and decrees dated 9th March, 1977 made in R.S.A. Nos. 1457/63 and 1455/63 by Punjab & Haryana High Court. Since common questions are raised in them for our consideration, they could be disposed of together.

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Maharaja Pratap Singh was the Ruler of the princely State of Nabha ever since the year 1941, which was then the subject-state of British Paramountcy. With the coming into force of the Indian Independence Act, 1947, when the State of Nabha along with other princely states in India got out of British Paramountcy and became a free and independent State, it accepted to the Dominion of India created under that very Act on subjects -- External Affairs, Defence and Communications, falling in line with similar other States in India. Thereafter, the Ruler of Nabha and the Rulers of Faridkot, Jind, Kapurthala, Malerkotla, Patiala, Kalsia and Nalagarh who desired to establish a Union of States comprising the territories of their respective States with a common executive, legislature and judiciary by the name of Patiala and East Punjab States Union (PEPSU), entered into a covenant dated May 5, 1948, which was concurred with by Government of India by guaranteeing enforcement of its provisions. PEPSU when, according to the said covenant, came into existence on August 20, 1948, the territory of Nabha State ceased to exist and became a part of the territory of the PEPSU. Subsequently, with the coming into force of the States Reorganisation Act, 1956, PEPSU, having got merged in the State of Punjab, all its territory which included the territory of Nabha State, became a part of the territory of the Punjab State.

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Maharaja Kumar Kharak Singh and Maharaja Kumar Gurbax Singh, the appellants (since deceased by L.R's.) in each of the present appeals, who were the brothers of Maharaja Pratap Singh, the Ruler of erstwhile Nabha State, long after its accession to Indian Dominion and its subsequent merger in PEPSU and further merger of PEPSU in State of Punjab, filed two original suits of July 13, 1960 in the court of Sub-Judge, First Class, Patiala, for recovery of possession of 'Bir Bhadson' situated in Village Agaul, Tehsil Nabha, District Patiala - to be referred to hereinafter as 'Bir' from the State of Punjab, since 'bir', once the State property of the State of Nabha had become state property of the State of Punjab and was part of its State Forest. The cause of action for those suits was founded on a

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A letter dated April 25, 1948 said to have been addressed to Maharaja Kumar Gurbax Singh by Maharaja Pratap Singh, while he was the sovereign ruler of the State of Nabha.

The averments in the complaints, of the said suits filed against the State of Punjab, as could be gathered from record in the present appeals, were in substance :

That Maharaja Kumar Kharak Singh (Plaintiff in one suit) and Maharaja Kumar Gurbax Singh (Plaintiff in other suit) were brothers of Maharaja Pratap Singh who was the Ruler of Nabha State.

That on April 25, 1948, Maharaja Pratap Singh addressed a letter (P.W.1/1) to Maharaja Kumar Gurbax Singh which read :

"NABHA 25th April, 1948.

My dear Bhai,

Just a line to say that it gives me great pleasure to give you the Bir Bhadson for you to have it as you farm which I should like you to divide equally and have a common house.

I understand that you may be returning to India with Maji or else You can instruct Chootaji to do the needful for you. Hope you are keeping well and I am asking chhotaji to deliver this letter to you with all good wishes from all and love.

Your affectionately,
sd/- Pratap Singh

Maharaja Kumar
Gurbax Singh, Nabha
Alngein Lodge,
526 Stewast Ave,
Itica N.Y.
U.S.A."

The said letter which was handed over to Maharaja Kumar Kharak Singh for being passed on to Maharaja Kumar Gurbax Singh since

amounted to grant of 'Bir' by Maharaja Pratap Singh, the then ruler of Nabha State, made as its sovereign in favour of his brother Maharaja Kumar Gurbax Singh, as his subject, expressing therein his desire that the 'Bir' could be divided equally between him and his brother Maharaja Kumar Kharak Singh, both of them had become the grantees of 'Bir' acquiring title thereto and were, therefore, entitled to get possession of the same from the State of Nabha before its merger in PEPSU and from PEPSU after the merger of State of Nabha in it and from the State of Punjab the merger of PEPSU in it. Since both PEPSU and the State of Punjab - the defendant in those suits, did not give possession of the said 'Bir' to plaintiffs despite several requests made by them to pepsu and the State of Punjab, the suits were being filed for recovery of possession of the same from the State of Punjab the ultimate successor of State of Nabha, within a period of 12 years from the date of the letter, i.e., April 25, 1948, as allowed by law. However, those suits were resisted by the State of Punjab, the defendant in the suits, by filing written statements in that behalf. On the basis of the pleadings in those suits, common issues framed in them by the Sub-Judge First Class, were the following :

1. Whether the claim of the plaintiff is justifiable? O.P.
2. Whether the suit of the plaintiff is within Limitation? O.P.
3. Whether in fact the letter of grant or gift dated 25th April, 1948 was ever written by the then Ruler and as such is binding on the present defendant? O.P.
4. Whether the document in dispute is a gift deed or grant and is enforceable at law against the present defendant? O.P.
5. Relief "

The Sub-Judge who tried the suits after the framing of the said issues in them, recorded his findings on all the issues, in favour of the plaintiffs and against the defendant - the State of Punjab. He decreed the suits accordingly.

The defendant - State of Punjab presented appeals against the said decrees in the suits before the District judge, Patiala. The District Judge who heard those appeals, did not disturb the findings of the trial court rendered on issues Nos. 1,2 and 4 which had been framed in the suits. But

A on issue No. 3 in them, it held that non-recognition of the rights of the plaintiffs in regard to the grant of land covered in the letter dated April 25, 1948 was in 'act of State and hence adjudication by a Municipal Court (Court of Sub-Judge) upon the correctness of such an act of State', whether it had reference to public rights or private rights, was beyond its competence as Municipal Court. Consequently, it concluded that the grant in the letter was neither binding nor enforceable against the defendant-State of Punjab and was not a matter on which Civil Courts (Municipal Courts/can pronounce. It, therefore, allowed the appeals and dismissed the suits.

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C The judgments and decrees made by the District Judge in appeals before him, were taken up by plaintiffs in R.S.A. Nos. 1457/63 and 1458/63, before the Punjab & Haryana High Court. A Division Bench of the High Court, which heard and said appeals, on reference made to it by a learned Single Judge of the same Court, dismissed them agreeing substantially with the findings of the District Judge in his judgments under appeals. It is the judgments and decrees made in Second Appeals which are now impugned in the present appeals by the L. R.'s of the deceased plaintiffs in the said suits.

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E We have heard Shri A.K. Sen, the learned counsel for appellants, the L.R.'s of the deceased plaintiffs in the suits out of which the present appeals have arisen and also Shri M.C. Bhandare, the learned counsel for the State of Punjab, the respondent in these appeals and the defendant in the suits. We have also gone through the written submission filed in the appeals and the entire record of the appeals.

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G As seen from the letter dated April 25, 1948, which was claimed by Plaintiffs as grant of 'Bir' consisting of land and building - a state property of Nabha State, made in their favour by Maharaja Pratap Singh of Nabha State, its Ruler at the time in exercise of his sovereign power is that which is sought to be given to Maharaja Kumar Gurbax Singh of Nabha, Plaintiff in one of the suits, to have it as his Farm and divide it equally, although it is not stated in the letter as to the person with whom it had to be shared equally. Whether the said letter could be construed as a grant of the Nabha State's State Property 'Bir' by Maharaja Pratap Singh, the sovereign Ruler of Nabha State in favour of Maharaja Kumar Gurbax Singh of Nabha,

H becomes very much doubtful when the contents of that letter, which are

already reproduced, do not say that 'Bir', a State property of Nabha State sought to be given to Maharaja Gurbax Singh of Nabha by his brother, Maharaja Pratap Singh, was given as a grant, as the sovereign ruler of Nabha State the when Maharaja Pratap Singh, P.W.1, the author of the letter (P.W.1/1) does not speak in support of such grant in is evidence which is as follows :

"P.W.1.

His Highness Maharaja Partap Singh on S.A.

I have seen P.W.1/1. It bears may signatures. I do not know after how many days after having it signed this letter it reached Maharaja Kumar Kharak Singh. Chhotaji is the pet name of Maharaja Kumar Kharak Singh.

XX by G.P.

Ijlass-e-alia was constituted under my orders in the year 1941. The certain rules must have been framed to regulate the working of ijlass-e-alia. The proposal for the grant of land were initiated by the ijlass-e-alia, who made relevant recommendations to me. Exhibit P.W.1/1 does not bear the signatures of any member of the ijlass-e-alia and it also does not show whether the recommendation was made by the ijlass-e-alia. No orders were given to the ijlass-e-alia to implement Ex.P.W.1/1 by me. No orders were given by me to the revenue authorities to implement Ex.P.W.1/1 (objected to the counsel for the plaintiff). Ex. P.W.1/1 does not bear any seal of office under my signatures. All officials order given by me used to have an official seal or some kind of typewriting to indicate the official capacity. On the eve of merger of Nabha State with Pepsu the property mentioned in Ex. P.W. 1/1 was not shown in the list of my private property."

When we come to letter (Exp. P.W. 1/1), addressee of that letter (Exp. P.W. 1/1) Maharaja Kumar Gurbax Singh, who has given evidence as P.W. 3, what he states on oath of the acceptance of grant 'Bir' consisting of land and building, the State property of Nabha State, is the following :

"I accepted this grant made through the above letter, when I came back to India about November, 1948."

A Therefore, the letter (Ex.P.W. 1/1) even if is assumed to constitute grant of 'Bir', the State property of Nabha State made by Maharaja Pratap Singh, the Ruler, in favour of his brother Gurbax Singh on April 25, 1948, as is held by courts below, that grant, according to the aforesaid categorical admission of Maharaja Kumar Gurbax Singh, was not accepted by him till he returned from America to India in November, 1948. If that be so, Bir continued to be the State property of Nabha State till May 6, 1944, when covenant for bringing into existence of State of PEPSU was signed and further up till August 20, 1948 when the State of PEPSU actually came into existence, becomes indisputable.

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C What then has to be seen is, whether all the State properties of State of Nabha, including 'Bir', which continued to be with Nabha State till date of coming into existence of the said covenant and till the further date on which PEPSU came into existence pursuant to that covenant, came to vest in the state of PEPSU, because Maharaja Pratap Singh, the Ruler of the State of Nabha, along with all other Rulers of princely States who were the signatories to the said covenant made over the administrations of their respective States to Raj Pramukh of PEPSU on August 20, 1948, when the State of PEPSU actually came into existence, since could be ascertained from the Articles of that very covenant dated May 5, 1948 pursuant to which PEPSU State was formed, material Articles of that covenant which bear on vesting of state properties and private properties of the Rulers of princely States, including the State of Nabha, which merged in PEPSU, are reproduced :

"Article VI

F (1) The Ruler of each Covenanting State shall, as soon as may be practicable, and in any event not later than the 20th of August, 1948, make over the administration of his State to the Raj Pramukh; and thereupon.

G (a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the Government of the Covenanting State shall vest in the Union and shall hereafter be exercisable only as provided by this covenant or by the Constitution to be framed thereunder ;

H (b) all duties and obligations of the Ruler pertaining or

incidental to the Government of the Covenating State shall devolve on the Union and shall be discharged by it;

(c) all the assets and liabilities of the Covenating State shall be the assets and liabilities of the Union; and"

Article XII

(1) The Ruler of each Covenating State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.

Provided that no such dispute shall be so referable after the 30th June, 1949."

The said article of the covenant, when are seen, make it abundantly clear that all the rights, authority and jurisdiction belonging to the Ruler, Maharaja Pratap Singh, which appertain or was incidental to the Government of Nabha State, also vested in the Union (PEPSU) and the same became exercisable thereafter only by Raj Pramukh of PEPSU as provided by the covenant. They also make it clear that all assets and liabilities of all the covenating States, including Nabha State, became the assets and liabilities of the Union. They further make it clear that all duties and obligations of the Rulers of covenating States, including the Ruler of Nabha State, i.e., Maharaja Pratap Singh, as was the position of other Rulers of States concerned, pertaining or incidental to the Governments devolved on the State of PEPSU and was to be discharged by it. The Ruler of Nabha State, Maharaja Pratap Singh, as was the position with Rulers of other States concerned, was entitled to full ownership, use and enjoyment

- A of only his private properties, as distinct from State or public properties, belonging to him on the date of his making over the administration of that State to the Raj Pramukh on furnishing to the Raj Pramukh before 20th day of September, 1948 an inventory of all the immovable properties, securities and cash balance held by him as such private property. If any
- B dispute has to arise as to whether any item of property is the private property of the ruler or State Property, it was to be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned, provided that no such dispute shall be so referable after the 30th June, 1949.
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- What, therefore, cannot be doubted, because of the non-acceptance of the grant of Bir by Maharaja Kumar Gurbax Singh till November 1948, is that then 'Bir' was allowed by Maharaja Pratap Singh, the Ruler of the State of Nabha to become the State property of PEPSU on August 20,
- D 1948, under the covenant of May 5, 1948.

- Next question is, if Maharaja Pratap Singh, the Ruler of the State of Nabha who had 'Bir' as the State property of Nabha State till he entered into the covenant dated May 5, 1948 and, according to the terms of which
- E covenant, he had allowed 'Bir' to vest in the State of PEPSU and become the State property of PEPSU, is it open to a person, who claims title to Bir the State property of Nabha as granted by Maharaja Pratap Singh, to recover possession of the same from the successor State of PEPSU of Nabha State or the successor State of Punjab of PEPSU although it was
- F the subject matter of the said covenant by which PEPSU was formed?

- If the State properties of Nabha for which private parties have a claim as in the present case, can they claim Nabha's State property 'Bir', by filing a suit in an ordinary civil court (Municipal Court) on the plea that the sovereign Ruler of Nabha entering into the covenant with other
- G sovereigns had wrongly transferred that property to the new State of PEPSU so as to vest, in it?

- In *Dalmia Dadri Cement Ltd, and Another v. Union of India and another*, AIR (1958) SC 8160, a Constitution Bench of this Court, dealing
- H with the aforesaid very covenant which had been entered into by the Rulers

of the princely States to form PEPSU, on consideration of the authorities, bearing on the rights and liabilities arising from such covenant, stated thus: A

"The result of the authorities then is that when a treaty is entered into by whcreunder sovereignty in territories passes from one to the other, clauses therein provided for the recognition by the new sovereign of the existing rights of the residents of those territories must be regarded as invested with the character of an act of State and no claim passed thereon could be enforced in a court of law. It must follow from this that the Covenant in question entered into by the rulers of the Covenanting States is in its entirety an act of State....." B C

Thus when the claim for recovery of the possession of 'Bir' , the right to possession of which was with the Ruler of Nabha put was vested in the PEPSU, any claim to be made for such possession is with reference to such covenant, which in its entirety, is an act of State, and therefore, such claim cannot be enforced by filing suits in the Court of Sub-Judge. First Class, Patiala, a Court of Law (Municipal Court). D

Again, the bar for filing such suits, which is incorporated in Article 363(1) of the Constitution of India, reads thus :

"363(1). Bar to interference by courts in disputes arising out of certain treaties, agreements, etc. - Notwithstanding anything in this Constitution out subject to the provisions of article 143 neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanand or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its Predecessor Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant , engagement , sanand or other similar instrument." E F G

Hence, we are not left in doubt that the district Court was well as H

A the High Court were right in reaching the Conclusion that the suits filed by plaintiffs (appellants) for recovery of possession of 'Bir' were barred being the subject of the covenant between sovereign Rules of independent States and also because of the par for filing of such suits envisaged in Article 363(1) of the Constitution of India.

B In the result, we dismiss these appeals, However, there shall be no order as to costs.

R.A.

Appeals dismissed.