

**State of Gujarat Vs. Girjorirao Ramchandrarao**

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**Court** : Supreme Court of India

**Decided On** : Jan-27-1969

**Reported in** : 1969(I)LC89(SC)

**Judge** : Shah,; Ramaswami and; Sikri, JJ.

**Acts** : [Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955](#) - Sections 15(1); [Constitution of India](#) - Article 372

**Appeal No.** : Civil Appeal No. 455 of 1966

**Appellant** : State of Gujarat

**Respondent** : Girjorirao Ramchandrarao

**Disposition** : Appeal dismissed

**Judgement** :

Shah, J.

1. Ganpatrao ancestor of the respondent was granted in or about 1806 A. D. a cash allowance of Rs. 17,000/- per mensem by the then Ruler of Baroda for giving his grand-daughter in marriage to him. From time to time this cash allowance was reduced. The respondent Girjorirao was receiving Rs. 350/- per mensem before the merger of the State of Baroda with the Dominion of India. The Legislature of the State of Bombay enacted the Bombay Merged Territories Miscellaneous Alienations Abolition Act 22 of 1955 to abolish the miscellaneous alienations prevailing in the merged territories and to provide for matters consequential and incidental there to. By Section 2(i) 'alienation' is defined as meaning 'a grant or recognition as a grant', amongst others of 'cash allowance or allowance in kind to any person by whatever name called, by the ruling authority for the time being before merger.' By Section 4 it is provided :

'Notwithstanding anything contained in any usage, settlement grant, agreement, sanad, order, rule, notification or Vat Hukum or any decree or order of a Court or any law for the time being applicable to any alienation in the merged territories, with effect from and on the appointed date :

(i) all alienations shall be deemed to have been abolished;

(ii) x x x'

Section 15 provides for the determination of compensation in lieu of alienations. It

provides :

'(1) In the case of an alienation consisting of a cash allowance or allowance in kind, the alienee shall be paid :

(i) seven times the amount of the cash allowance or of the value of the allowance in kind, as the case may be, if the alienation was hereditary without being subjected to deduction or cut at the time of each succession;

(ii) five times the amount of the cash allowance or the value of the allowance in kind, as the case may be, if the alienation was hereditary but subject to a deduction or cut at the time of each succession; or

(iii) x x x x'

The respondent claimed compensation for abolition of the cash grant under Section 15 (1) (i) of the Act, at seven times the amount of annual cash allowance received by him.

2. The Jagir Abolition Officer held that the allowance was 'subject to a deduction or cut at the time of each succession', and the respondent was entitled to compensation under Section 15 (1) (ii) of the Act. He accordingly awarded Rs. 15,666/9/- being five times Rs. 3,133/5/- received by the respondent as cash allowance in the year ended July 31, 1955. In appeal by the respondent the Gujarat Revenue Tribunal confirmed that order.

3. The respondent then moved a petition under Article 226 of the Constitution against that order, and the High Court of Gujarat being of the opinion that the order of the Tribunal suffered from an error apparent on the face of the record in that the compensation was payable under Section 15 (1) (ii) set aside the order of the Tribunal, and directed that compensation be worked out under Section 15(1)(i). Against that order, with special leave granted by this Court, the State of Gujarat has appealed to this Court.

4. It is common ground that the cash allowance paid to the respondent was hereditary. The High Court held that the cash allowance was not subject to deduction or cut on succession. Correctness of that view is challenged by the State of Gujarat. That there were deductions in the cash allowance generation after generation is not disputed. Certain statutory provisions which have a bearing are relied upon by the respondent in support of his case that the cash allowance is no longer subject to a 'succession cut'.

5. On August 13/16, 1940, by Huzur Order it was directed that :

'(a) No service should be exacted from holders of Kanyadanvillages; and

(b) (i) In the case of first twelve Sardars, no further pedhi(Succession ) cut should be made as recommended bythe Committee,

(ii) In other cases instead of the present pedhi (succession) cut of 25% at each Mobadla (mutation), a cut of 20% should be made, and

(iii) x x x x'

The name of the respondent was not included in the list of the first twelve Sardars referred to in Clause (b) (1) : his cash allowance was therefore subject to the 'succession cut' on mutation.

6. On January 20, 1948, a Huzur Order was issued that :

'His Highness the Maharaj Saheb has been graciously pleased to order with regard to Assamdars, Inamdars, Jahgirdars, Vatandars, etc. as follows : --

(i) There shall in future be no cut in their emoluments at the time of mutation.

(ii) Cut, under the head 'service' is abolished. (in) They will be entitled to receive pay over and above their permanent emoluments.'

The result of the Huzur Order dated January 20, 1948, was to abolish the 'service cut' and the 'succession cut' in respect of all Assamdars, Inamdars, Jahgirdars, Vatandars.

7. On January 25, 1949, the Government of Baroda issued an order which directed that ;

'(1) 'Huzur Order No. 26/17 dated 20-1-48 be cancelled.

(2) x x x x

(3) All pedhi (succession) cut at the time of mobadla (mutation) should be effected according to rules.

x x x x'

This was Evidently an executive direction and had not the support of any legislation.

8. The Huzur Order dated January 20, 1948, was made by the Maharaja in exercise of his sovereign authority and was operative as law. Thereby the 'service cut' and the 'succession cut' were abolished. It was not thereafter open, by an executive order, to the Government to modify a statutory provision. The respondent was, therefore, entitled by virtue of the Huzur Order dated January 20, 1948, to receive payment of the cash allowance without any deduction or cut at the time of each succession. Whatever may have been the position prior to January 20, 1948, the law in the State of Baroda after that date was that there was to be no 'succession cut' or 'service cut' in the amount of the cash allowance paid to Assamdars, Inamdars and others. That provision could be but was not, altered by a statutory provision. By virtue of Article 372 of the Constitution, the Huzur Order dated January 20, 1948, was existing law at the date of the Constitution, and the respondent was entitled to the benefit of that law, since it is not the case that after the enactment of the Constitution and before the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, there was any modification made in that law.

9. The respondent was, therefore, entitled to compensation under Section 15(1)(i) of the [Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955](#).

The appeal fails and is dismissed with costs.

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