

(1955) 03 RAJ CK 0005

Rajasthan High Court (Jaipur Bench)

Case No: Civil Writ Petition No. 713 of 1952

Bahadursingh

APPELLANT

Vs

Rajpramukh of
Rajasthan and others

RESPONDENT

Date of Decision: March 31, 1955

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Constitution of India, 1950 - Article 154, 163, 226, 361, 361(1)

Citation: AIR 1955 Raj 135 : (1955) RLW 389

Hon'ble Judges: Wanchoo, C.J; Sharma, J; Bapna, J

Bench: Full Bench

Advocate: D.P. Gupta, for the Appellant; K.S. Hajela, Advocate-General, R.A. Gupta, Dy. Govt. Advocate and R.C. Vyas for Opposite Party No. 2 and C.L. Agarwal and D.M. Bhandari, Amicus Curiae, for the Respondent

Judgement

Sharma, J.

The following two questions have been referred to this Full Bench.

1. Whether a decision by the Rajpramukh in the matter of recognition of a successor to a Jagir is liable to be challenged by a civil suit?

2. If the answer to the above question be in the negative, whether the remedy of the in-successful litigant lies by a petition to this Court under Art. 226 or the matter is one to which the provisions of Art. 363 of the Constitution would apply?

2. These questions arise out of an application under Art. 226 of the Constitution by the petitioner Thakur Bahadursingh challenging the order of the Rajpramukh of Rajasthan (hereinafter to be referred to as the Rajpramukh) dated 16-9-1952 by which the respondent No. 2 Basant Singh was recognised as successor to the late Jagirdar Thakur Gopalsingh of Digwara in Alwar District on the ground that sanction for his adoption had

been given by the Rajendra Shasan of the erstwhile Alwar State. It has been alleged in the petition that Thakur Sheodan Singh, the father of Gopalsingh as well as of the petitioner was Jagirdar of -/6/- share in the jagir of Digwara and that on his death his eldest son Gopalsingh succeeded to the Jagir. Th. Gopalsingh had no male issue and his wife had predeceased him. He, therefore, made an application dated 24-2-1945 to the Prime Minister of Alwar for permission to adopt the respondent Basant Singh as his son.

This permission was accorded by the Executive Council of the then Alwar State on 2-5-1946 and an appeal by the petitioner to His Highness the Maharaja of Alwar failed, although Th. Gopalsingh had submitted two applications, one dated 23-5-1946 and the other dated the 14-6-1946 to the effect that he did not wish to take the respondent No. 2 Basantsingh in adoption and so no permission was necessary. Th: Gopalsingh died on 7-7-1946, but despite the death of Th: Gopalsingh and his applications dated 23-5-1946 and 14-6-1946, His Highness the Maharaja of Alwar ignoring the provisions of Jagir Rules of Alwar State, accorded permission for Basantsingh's adoption on 11-10-1946. However, the petitioner filed an application for mutation of his name claiming that according to the Jagir Rules, he was the nearest heir to Th: Gopalsingh and that the respondent No. 2 had no right whatsoever, because he had not been adopted in accordance with Hindu law.

An inquiry was made in the matter and the Mahkama Jagir of Alwar State submitted a report that no ceremony of adoption of respondent No. 2 ever took place. In the meantime, Alwar State was merged into the Matsya Union and the Government of Matsya which was the successor Government of erstwhile Alwar State held that no mutation could be sanctioned in the name of respondent No. 2 as he was not actually adopted and this decision was upheld by the Matsya Mantri Mandal on 7-5-1949. Against this decision of the Matsya Mantri Mandal, a review application was filed by respondent No. 2 and as the present State of Rajasthan had come into being in the meanwhile, the review application was decided by the respondent No. 7, the Rajpramukh on 16-9-1952 by which he set aside the order of Matsya Mantri Mandal Union dated 7-5-1949 and recognised the succession of the respondent No. 2.

It has been submitted that the recognition of the respondent No. 2 by the Rajpramukh was against the provisions of the erstwhile Alwar State Jagir Rules and was patently erroneous. It has, therefore, been prayed that the order of the Rajpramukh dated 16-9-1952 be quashed.

3. No reply was filed to this petition on behalf of the respondents, but the Division Bench which heard the petition thought it proper to give a notice to the Advocate-General as important questions of law were involved as to the jurisdiction of the Rajpramukh.

4. We have heard Mr. D.P. Gupta counsel for the petitioner as well as the Amicus Curiae Mr. D.M. Bhandari who supported the case of the petitioner. We have also heard the Advocate-General as well as Mr. C.L. Agarwal, another Amicus Curiae on behalf of the

respondent.

5. The contention of the learned counsel for the petitioner is that the Rajpramukh decided this case in the capacity of a quasi tribunal and therefore, this Court has power to quash his order because it is patently erroneous, It was argued that according to R. 4 of the Alwar Jagir Rules, on the death of a Jagirdar, his eldest son or in the absence of a son his legally adopted son as provided in R. 5, was entitled to succeed. If there were no son or legally adopted son, then the nearest of kin was-entitled to succeed provided he:

(a) was a lineal descendant in the male line of the original grantees;

(b) was a bona fide resident of the Alwar State or undertook to make the Alwar State his permanent home;

(c) has not inherited another Jagir and

(d) was not according to the Dharam Shastras debarred from succession, as for example one who is-

(i) a Patit (fallen from his caste);

(ii) a eunuch,

(iii).....

It was further argued that under R. 5, a Tikai Jagirdar or a Chhutbhaiyya who had no male issue could adopt an heir with the previous sanction of his Highness" Government. It was argued that although sanction had been given, yet no adoption-was actually made in accordance with that sanction. The order of the Rajpramukh does not show that it had been considered whether the respondent No. 2 had been actually adopted and the succession of the respondent No. 2 was recognised only on the ground that permission had been given by the Government of His Highness of Alwar for the adoption.

It was argued that the Rajpramukh of the United State of Rajasthan was by Art. 7(3) of the Covenant of Rajasthan, authorised to resume Jagirs or to recognise succession according to law and custom, to the rights and titles of the Jagirdars. According to the Jagir Rules, the respondent No. 2 could be held to be entitled to the Jagir only if it were proved that the respondent No. 2 had been taken in adoption by the late Jagirdar Gopalsingh. As this law was ignored by the Rajpramukh, the petitioner is entitled to obtain a writ and to have the order or the Rajpramukh set aside by this court under its extraordinary powers under Art. 226 of the Constitution.

6. The Amicus Curiae Mr. D.M. Bhandari not only supported the contention of the learned counsel for the petitioner, but also contended that it was open to the petitioner to bring a civil suit for the. declaration of his title and for possession. It was argued that although Art.

7(3) of the Covenant of Rajasthan laid down that unless other provision is made by an Act of the Legislature of the United State, the right to resume Jagirs or to recognise succession according to law and custom, to the rights and titles of the Jagirdars shall vest exclusively in the Rajpramukh, yet this provision of the Covenant came to an end as soon as the Constitution of India came into force and the State of Rajasthan became one of the territories of India under the Constitution.

It was argued that after the Constitution of India came into force, the Rajpramukh of Rajasthan had no other powers than what were conferred upon him by the Constitution. The Rajpramukh of Rajasthan was not given the exclusive power of deciding the question of succession to Jagirs by any of the provisions of the Constitution. As the order of the Rajpramukh was passed after the Constitution of India came into force, that order had no validity and as the matter is entirely of civil nature, the civil courts have power under S. 9, Civil P.C., to decide the matter in a Civil suit.

7. The learned Advocate-General argued that the Rajpramukh of Rajasthan had, under Art. 7(3) of the Covenant, exclusive power to decide the question of the present succession and that the Covenant did not come to an end on the coming into force of the Constitution of India. It was argued that under Art. 363 of the Constitution neither the Supreme Court nor any other court can have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant etc., which was entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which the Government of the Dominion of Indian or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement.

It was argued that the present dispute is a dispute arising out of the provisions of Art. 7(3) of the Covenant of Rajasthan (hereinafter to be referred to as the Covenant) which was entered into before the commencement of the Constitution by the rulers of different units comprising the present Rajasthan and the Government of the Dominion of India was party thereto. It was further argued that by virtue of Art. 361(1) of the Constitution, the President, or the Governor or Rajpramukh shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. It was argued that the Rajpramukh of Rajasthan decided the present dispute in exercise and performance of the powers and duties of his office or at any rate he did so purporting to do it in the exercise and performance of those duties.

It was, therefore argued that no writ, direction or order could be issued against him under Art. 226 of the Constitution. As regards the remedy by way of suit, it was argued that it had been decided very recently by the Supreme Court in the case of - "Maharaja Umrao Singh v. Bhagwati Singh", Civil Appeal No. 125 of 1952 (SC) (A), that the Rajpramukh had the exclusive powers to recognise the succession to the Jagir of Indergarh which was in the erstwhile Kotah State now forming part of Rajasthan and it was held that no civil

suit could lie in that regard. It was consequently argued that the remedy even by a civil suit is not available to the petitioner. He was supported in his arguments by Mr. C.L. Agarwal who also argued that as Art. 372 of the Constitution saved all the laws in force on the day the Constitution came into force and as the Covenant was in force when the Constitution came into force, Art. 7(3) of the Covenant survived and consequently the Rajpramukh had the exclusive power to determine the question of present succession.

8. The first question which we have got to answer is whether the petitioner could have his remedy by way of a civil suit. There is no doubt that the matter is entirely of civil nature and under S. 9 of the Civil Procedure Code, a civil suit could lie unless cognizance of a civil suit relating to the matter in question was either expressly or impliedly barred. It has not been shown to us that the jurisdiction of civil courts in a matter like the present is expressly barred. On the strength of Art. 7(3) of the Covenant, however, it was argued that the jurisdiction of civil Courts was impliedly barred.

9. The question whether by virtue of Art. 7(8) of the Covenant, the jurisdiction of civil courts was impliedly barred came up before this court in case of - "Umrao Singh v. Bhagwati Singh", Civil Appeal No. 5 of 1950 (Raj) (B). In that case one Maharaja Sumer Singhji of Indergarh, District Kotah, Rajasthan died without any male issue and in his place Maharaja Bhagwati Singh was recognised to be an adopted son of the late Maharaja Sumersingh Ji and was consequently recognised by the Maharao of Kotah as a successor of the deceased to the Jagir. A suit was brought in civil courts in the erstwhile Kotah State that the plaintiff Maharaja Umrao Singh was the sole heir of the deceased and consequently, entitled to a declaration to the effect that he was the real successor of Maharaja Sumersingh to the Jagir of Indargarh.

On behalf of the defendant it was pleaded inter alia, that no civil suit could lie in the matter and it was decided by this Court by its judgment dated 17-10-1950 that on the allegations in the plaint and by virtue of the provisions of Art. 7(3) of the Covenant such a suit was impliedly barred. An appeal was taken by the defeated plaintiff to the Supreme Court being "Civil Appeal No. 125 of 1952 (SC) (A)". It was held by their Lordships that the civil suit was barred.

Their Lordships observed as follows:

In para. 3 it was said that the late Maharaja Sumer Singhji himself, from Thikana Chhapol, with the sanction of Maharao Sahib Kotah, was taken as successor to Indergarh, on the death of Maharaja Sher Singh, without a male issue, and that Maharaja Sher Singhji, also in the same manner, on the death of Maharaja Sangram Singhji, dying without a male issue, was taken from Thikana Chhapol as successor to Indergarh. The plaintiffs' case thus is clearly founded on the plea that the succession to the Gaddi of Indergarh was determined by the ruler of Kotah in his capacity as "sovereign".

It is not even alleged in the plaint that the jagir is hereditary in nature or that the sanction of the Maharao was a mere formality. After the integration of Rajasthan the "sovereign" right exercised by the Maharao of Kotah in this respect was dealt with by Art. 7(3) of the Covenant entered into between the rulers of the different States of Rajasthan including Koath.

Their Lordships thereafter, reproduced Art. 7(3) of the Covenant which is as follows:

Unless other provision is made by an Act of the Legislature of the United State, the right to resume jagirs or to recognise succession according to law and custom, to the rights and titles of the jagirdars shall vest exclusively in the Rajpramukh.

Thereafter, their Lordships observed as follows:

The Rajpramukh, in exercise of this power, on the 1st of December, 1949 recognised Maharaja Bhagwati Singhji, second son of Maharaja Balbirsinghji of Kh-ato-li and adopted son of the late Maharaja Sumer Singhji of Indergarh, as successor to the late Maharaja Sahib of Indergarh. The words of the Covenant are unambiguous and it is declared therein that no other authority except the Rajpramukh of Rajasthan will be competent to decide the question of succession. That being so, no suit can be maintained in a civil court to direct a "sovereign" to perform his "sovereign duties" in a particular manner.

The power of recognising an heir to the Gaddi of Indergarh which was once exercised by the Maharao of Kotah and which is now being exercised by the Rajpramukh of Rajasthan, is political in character and is an "incident of sovereignty", and a matter that has to be exclusively settled in exercise of "such a power" cannot possibly be the subject of adjudication in a civil court.

Further their Lordships observed:

In the absence or any evidence to the contrary it has to be assumed that the Indergarh jagir was resumable after the death of the last holder and it was in exercise of "sovereign rights" that the Maharao of Kotah recognised the adoption of Bhagwati Singh and the Rajpramukh of Rajasthan in "exercise of the same right" recognised him as an heir to the last jagirdar. Even if the jagir was of a hereditary nature, it seems clear that the Maharao of Kotah was "admittedly the sole arbiter" for determining the question of succession to the Gaddi according to law and custom and that exclusive power, by the binding force of the Covenant, has passed to the Rajpramukh of Rajasthan.

Learned Advocate-General very strenuously argued on the strength of the judgment in the above case that no civil suit can lie in the present case. There can be no doubt that in British days Alwar State wherein the Jagir in question is situated was, like Kotah and other States of Rajasthan, an independent State under the paramountcy of the British Crown. In 1947, India obtained Independence and became a Dominion by reason of the Indian Independence Act of 1947. The suzerainty of the British Crown over Alwar State

like other Indian States lapsed at the same time because of S. 7 of that Act. Immediately after Alwar State acceded to the new Dominion by Executing Instruments of Accession. The new Dominion of India was empowered to accept these accessions by a suitable amendment in the Government of India Act, 1935.

The form of that Instrument of Accession is given on p. 165 Appendix 7 of the White Paper on Indian States published by the Ministry of States (Government of India).

According to this Instrument of Accession, the Sovereignty of the acceding States including Alwar State was expressly recognised and safeguarded. (Vide para 8 of the said Instrument). Whatever sovereignty remained with the ruler of Alwar State was transferred to the Rajpramukh after the merger of Alwar State in the present Rajasthan State. Under R. 7(3) of the Covenant, therefore, the -sovereign power which the ruler of the erstwhile Alwar State had in the matter of recognizing succession to Jagirs, was passed on to Rajpramukh. The Rajpramukh therefore, had the exclusive power to recognise succession to Jagirs and on this view, their Lordships held in Maharaja Umrao Singh's case that a civil suit in the matter was barred. I have quoted at length from the judgment of their Lordships in that case in order to emphasise that it was on the view that the recognition of Shri Bhagwati Singh as successor to the gaddi of Indergarh was made by the Rajpramukh in the exercise of "his sovereign powers" which he got from the Maharao of Kotah on the formation of the present Rajasthan State that their Lordships held the matter could not be agitated in civil courts.

The question in the present case arises whether that sovereign power ensures to the Rajpramukh even after the coming into force of the Constitution of India. To my mind, such a power did not remain either with the Rajpramukh or the State of Rajasthan. I am supported in this view by a judgment of their Lordships of the Supreme Court in the case of - [Virendra Singh and Others Vs. The State of Uttar Pradesh](#). In that case the rulers of Charkhari and Sarila in Bundelkhand and Baghelkhand agreed to unite themselves into one State which was to be called the United State of Vindhya Pradesh.

In pursuance of this agreement, each of the 35 Rulers of Bundelkhand and Baghelkhand including the rulers of Charkhari and Sarila signed a covenant on 18-3-1948 which brought the new State into being. Soon after this, the Revenue Officers of the newly formed Vindhya Pradesh Union tried to interfere with the grants made by certain rulers of the integrating States before the integration. Among them were the grants in question in the said case. This occasioned complaints by the grantees to the Vindhya Pradesh Government and that Govt. decided on 7-12-1948 to respect the impugned grants.

The integration did not work satisfactorily, and on 26-12-1949, the same 35 Rulers entered into another agreement abrogating their covenant and dissolving the newly created State as from 1-1-1950. By the same instrument each Ruler ceded to the Government of Indian Dominion as from the same date "full and exclusive authority jurisdiction and powers for, and in relation to, the governance of that State". This

instrument was called the Vindhya Pradesh Merger Agreement. The Dominion Government took over the administration of the States on 1-1-1950 and decided to form them into a Chief Commissioner's Province. But the four villages in respect of which the grants were made by the Rulers of Charkhari and Sarila only a little before the formation of Vindhya Pradesh were taken out of the new province of Vindhya Pradesh and were absorbed into the United Provinces (now Uttar Pradesh).

The Government of Uttar Pradesh with the concurrence of the Government of India confiscated the said grants and the grantees filed an application under S. 32 of the Constitution before the Supreme Court impugning the action of the Uttar Pradesh Government as well as that of the Government of India. The order was held to be illegal and it was observed:

Every vestige of sovereignty was abandoned by the States and surrendered to the peoples of the land who through their representatives in the Constituent Assembly hammered out for themselves a new Constitution in which all were citizens in a new order having but one tie, and owing but one allegiance, devotion, loyalty, fidelity, to the Sovereign Democratic Republic that is India. At one stroke all other territorial allegiances were wiped out and the past was obliterated except where expressly preserved, at one moment of time the new order was born with its new allegiance springing from the same source for all grounded on the same basis; the sovereign will of the the peoples of India with no class, no caste, no race, no creed, no distinction no reservation.

10. It would thus be clear that the Rajpramukh of Rajasthan or for the matter of that of any other State in India, had no sovereign powers whatsoever left in him after the coming into force of the Constitution of India and therefore, whatever sovereign powers the Rajpramukh could exercise under Art. 7(3) of the Covenant before the Constitution of India came into force, could not be exercised by him after the Constitution came into effect. The ruling in "Umrao Singh's case (A)", therefore, has no application to the facts of the present case, as the very basis on which it was given has disappeared after the enforcement of the Constitution.

11. It has been argued that the Constitution by Art. 363(1) has barred the jurisdiction of the Supreme Court or any other court in any dispute arising out of any provision of a treaty, agreement, engagement, covenant, sanad or other similar instrument which was entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which the Govt., of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement. It was argued that the Covenant is saved by Art. 363(1) and, therefore, notwithstanding anything in the Constitution, the question about the recognition of succession to the Jagir in question remained in the exclusive powers of the Rajpramukh and at any rate the court has no jurisdiction to decide whether the Rajpramukh could exercise that power or not According to Art. 363(1) the Supreme Court or any other court shall not have jurisdiction in any, dispute arising out of any provision of a treaty,

agreement, covenant.....which has or has been continued in operation after the commencement of the Constitution. The Covenant was no doubt entered into by the Rulers of the Covenanting State in the erstwhile Rajputana before the commencement of the Constitution & the Government of the Dominion of India was a party thereto. However, the question arises whether the present dispute can be said to arise out of any provision of the Covenant. Now what is the dispute in the present case: The dispute is that the petitioner is the legal successor of the late Jagirdar and not the respondent No. 2 and that the respondent No. 2 is not the legally adopted son of the late Jagirdar. This dispute does not arise out of any provision of the Covenant. Art. 7(3) of the Covenant provides only the forum to decide such a disputed question according to law and custom.

The covenant was afterwards modified by a subsequent Covenant entered into between the various rulers of the Covenanting States of Rajasthan with the concurrence of the Government of India. This Covenant is called supplementary covenant and is given at page 375 of the White Paper on Indian States, issued by the Ministry of States, Government of India. Art. (1) of that Covenant says

Notwithstanding anything contained in the original Covenant, the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the United State of Rajasthan, and shall be enforced as such in accordance with the tenor of its provisions.

Thus if the Rajpramukh did not possess that power under the Constitution which he possessed under Art. 7(3) of the Covenant, he could not exercise that power after the Constitution came into force. There is no provision whatsoever in the Constitution according to which the Rajpramukh has exclusive power to determine the question of succession to the Jagirs. The Rajpramukh was, therefore, not authorised to decide the present question in his capacity as a sovereign as was provided by Art. 7(3) of the Covenant.

The question whether under the Constitution the Rajpramukh has the power which was given to him by the Covenant cannot be said to be a dispute arising out of any provision of the Covenant. There is no provision in the Constitution taking out such a question from the jurisdiction of the courts. The question whether a particular person has got a right to succeed in accordance with law and custom to the Jagir left by the deceased is a question of civil nature and there being no law at present to oust the jurisdiction of civil court either expressly or by implication, they have got the jurisdiction to determine such question. In the old Alwar State, the Ruler thereof being a sovereign had a right to determine such question and it could not be agitated in civil courts. After the integration of Alwar State in the present Rajasthan State, the Rajpramukh to whom the sovereign powers of the Alwar State Ruler were transferred had exclusive power to determine such question in accordance with Art. 7(3) of the Covenant.

The same rulers who were party to the covenant executed a supplementary covenant in accordance with which they consented to abide by the Constitution which might be framed by the Constituent Assembly of India and agreed that the Constitution of India to be adopted by the Constituent Assembly of India shall be the Constitution of the United State of Rajasthan and shall be enforced as such in accordance with the tenor of its provisions. According to the tenor of the provisions of the Constitution, the Rajpramukh as no sovereign power now and there being no provision in the Constitution barring the jurisdiction of the civil court in the matter like the present, the civil courts have power to deal with the question. I do not think Art. 363(1) bars the jurisdiction of courts in such a matter. In - "Virendra Singh"s case (C)", cited in the earlier part of this judgment, their Lordships observed as follows:

We do not found on the will of the Government. We are no longer concerned with principalities and powers. We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate of its protecting provisions and flashing the flaming sword of its inspiration.

By the supplementary covenant, the rulers of the various covenanting States of Rajasthan wholly divested themselves of whatever sovereign powers they had before the Constitution came into force and consented to abide by the Constitution of India and the Constitution of India having come into force and having made no provision that the question like the present shall be decided by some other authority, the answer is clear that the civil courts have got jurisdiction in the regular way to decide the present question.

12. Reliance was also placed upon Art. 361 of the Constitution by the learned Advocate-General and the amicus curiae who supported him. It reads as follows:

The President or the Governor or Rajpramukh of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

In the civil suit which may be brought in the matter like the present, the Rajpramukh shall not be required to answer to the court. The parties will fight out the suit among themselves and the court will decide the question as to who will succeed to the jagir in question in accordance with law and custom.

13. It was argued by Mr. C.L. Agarwal that all the existing laws were saved by Art. 372(1) of the Constitution and that the Covenant was an existing law on the date, the Constitution Came into force. First of all the Covenant cannot have the status of law. It was merely a constitutional arrangement during the interim period between different rulers of the covenanting States of Rajasthan, guaranteed by the Government of India Moreover, it was modified subsequently by the supplementary covenant and the interim constitutional arrangement gave place to the provisions of the Constitution. The argument

bearing on Art. 372 of the Constitution, therefore, has no force. My answer to the first question therefore, is, as follows:

A decision by the Rajpramukh in the matter of recognition of a successor to a jagir after the coming into force of the Constitution from 26-1-50, does not bar a civil suit.

14. We have not been required to return an answer to the second question in case our answer to the first question is in the affirmative. There is therefore, no necessity to consider the second question.

Bapna, J.

15. I agree, but would like to add that the authority conferred on the Rajpramukh by Art. VII(3) of the Covenant also came to an end, because its exercise is inconsistent with the provisions of the Constitution. The exercise of the powers under Art. VII(3) of the Covenant by the Rajpramukh was kept independent of the advice of the Ministers according to Art. V(1) of the Covenant, and it was on that basis that it was argued that it was within the exclusive jurisdiction of the Rajpramukh to decide the question of succession to Jagirs. But this provision of the Covenant is directly inconsistent with Art. 163 of the Constitution. The constitutional position of the Rajpramukh as defined by Art. 163 is that the Rajpramukh is bound to act according to the advice of his Council excepting in certain cases, which are not relevant for the purposes of this case.

The authority of the Rajpramukh to exercise his function of recognising succession to Jagirs in his individual discretion is not continued or conferred upon the Rajpramukh by the Constitution. Under Art. 154, the executive power of the State was no doubt vested in the Rajpramukh, but it was to be exercised only in accordance with the Constitution, The power conferred upon the Rajpramukh by Art. VII(3) read with Article V(1) is thus inconsistent with the provisions of the Constitution, and must be deemed to have come to an end on the enforcement of the Constitutions I agree with the answer proposed to be given.

Wanchoo, C.J.

16. I have read the judgments of my brothers Bapna and Sharma, and agree with them and have nothing to add.

17. Our answer to the first question is-

A decision by the Rajpramukh in the matter of recognition of a successor to a jagir after the coming into force of the Constitution from 26-1-50, does not bar a civil suit.

18. In view of the above, the second question needs no answer.