A

MOHSIN ALI & ORS.

v.

STATE OF MADHYA PRADESH

April 22, 1975

B [V. R. KRISHNA IYER, R. S. SARKARIA AND A. C. GUPTA JJ.]

Sovereign grants—Construction of—Surrounding circumstances as aid of construction—Occasion of grant as aid of construction.

By Firman of 1934, the then ruler of Bhopal in appreciation of long and distinguished service of Sir Liaqat Ali gave him, in addition to the grant of pension, the residential house in question and a sum of Rs. 400/- per month
C out of the Privy Purse of the Ruler.

Liaqat Ali died in March 1947 without leaving any issue or widow. In May, 1947, Syed Mohammed Ali, an heir of Liaqat Ali, who was residing in the said house was forcibly ejected by the Government of Bhopal. In 1957, the present appellants being the heirs of Syed Mohammed Ali filed the present suit against the State of Madhya Pradesh for the recovery of the possession of this house on the ground that the Firman gifted the house absolutely to Liaqat Ali and that they were entitled to inherit the house. The suit
D was resisted by the respondent on the ground that the ruler's Firman did not confer absolute title on Liaqat Ali, but only a life interest in the house. The Firman inter-alia stated "and you are granted your residential house situated at Bara Mahal Shahjahanabad as a gift." The Trial Court decreed the suit on the ground that the suit house was gifted by the ruler to Liaqat Ali absolutely. The High Court on appeal reversed the finding and held that on a true construction of the Firman Liaqat Ali was given only a life estate. On
E appeal to this Court, it was contended by the appellants :—

1. The last sentence of the Firman declares in unambiguous terms that the grant of the house is an out and out gift.

2. Since the grantor and the grantee are Muslims, the gift would under Mohammedan Law have the effect of conveying an absolute heritable estate.

F 3. In a letter addressed by the Chief Engineer and Secretary to the P.W.D., Bhopal, issued in the year 1938, it was mentioned that the building in question was in the possession and ownership of this Liaqat Ali.

It was contended by the respondents :—

1. The grant of the house is not to be disassociated from the pensionary grants.

G 2. The Firman represents a grant made by an absolute ruler in favour of his subject and was not a *hiba* made by one Muslim to another Muslim under Mohammedan Law.

3. The grant being a sovereign grant has to be construed strictly against the guarantee and imperfection in the language of the Firman had to be resolved in favour of the Government by reading it as a whole in the light of the surrounding circumstances.

H Dismissing the appeal,

HELD : In case of sovereign grants, where two interpretations are possible, that which is most favourable to the sovereign is to be preferred. [244B-C]

HELD FURTHER—The Firman does not convey in precise and unequivocal terms full and absolute ownership of the suit house to the grantee. The Firman does not use the word like heritable estate or that the grant would take effect from generation to generation or grant to the grantee and his heirs. [246F]

Held further—The Firman has to be read as a whole. It cannot be dissected into three water-tight compartments. It is permissible to consider the surrounding circumstances and the occasion on which this grant was made as legitimate aids to construction of the Firman. The Firman confers three-fold benefits; pension, Rs. 400/- per month and beneficial interest in the residential house. The object of conferring these benefits was the same, namely, to secure to the retiring servant a handsome maintenance and comfortable residence for the rest of his life. The surrounding circumstances, namely, the grantee had no issue nor any near relation and was already residing at the suit house, also confirm thisi interpretation. [246G, 247A-B].

HELD FURTHER—The grant is not a *hiba* made in accordance with Mohammedan Law. It was a grant made by an absolute ruler to his subject. [248D-E].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 166 of 1968.

From the judgment and decree dated 5th September, 1962 of the Madhya Pradesh High Court in First Appeal No. 1 of 1956.

Hardayal Hardy and *S. S. Hussain*, for the appellants.

Ram Panjwani, H. S. Parihar and *I. N. Shroff*, for the respondent.

The Judgment of the Court was delivered by

SARKARIA, J.—By a *firman*, dated October 25, 1934, Nawab Sir Hamidullah Khan, the then Ruler of Bhopal State, in appreciation of the long and distinguished services of Sir Liaqat Ali, gave to the latter, in addition to the grant of pensions, the residential house in question as "inayat ataa". Sir Liaqat who was already residing in this house, continued therein till he died, issueless and widowless, in March 1947. One Syed Mohammed Ali who was the son of Sir Liaqat's father's sister, also used to reside in this house with the deceased. After Sir Liaqat's death, Syed Mohammed Ali continued in occupation of this house as one of the nine heirs of the deceased, till he was "forcibly and unlawfully" ejected in May 1947 by the then Government of Bhopal. Paying a "deaf-ear" to the repeated demands of Syed Mohammed Ali for restoration of possession, the Government "persisted in the act of trespass" and continued in illegal possession of the house. After his ouster, Syed Mohammed Ali also died sometime in 1947.

On April 30, 1947, the Nawab of Bhopal signed the Agreement of Merger and the State of Bhopal was taken over by the Chief Commissioner on behalf of the Government of India on June 1, 1949. Thereafter, on November 1, 1956 the territory of the former Bhopal State became a part of the re-organised State of Madhya Pradesh.

On August 21, 1957, after serving a notice under s. 80, Code of Civil Procedure, the plaintiffs 1 to 3, who are the son, daughter and widow, respectively, of Syed Mohammed Ali, instituted the suit against the State of Madhya Pradesh for recovery of possession of the house, on the footing that under the *firman*, it had been gifted absolutely by the Nawab to Sir Liaqat Ali who died possessed of it as full owner, and on the donee's death, it was inherited by Syed Mohammed Ali who, in turn, was succeeded by the plaintiffs. It was further pleaded

A that Syed Mohammed Ali was "forcibly and unlawfully" dispossessed by the Government in May, 1947.

The suit was resisted by the defendant State on the ground, *inter alia,* that the Ruler's *firman* "did not confer absolute title on late Liaqat Ali", but only a life-interest in the house.

B The Additional District Judge who tried the suit, found on a construction of the *firman* (Ex-P-1), that the suit house had been gifted by the Ruler to late Sir Liaqat Ali, absolutely, and, in consequence, decreed the suit. On appeal, a Division Bench of the High Court of Madhya Pradesh reversed that finding and held that "on a true construction of the *Firman* (Ex.P-1), the grantee, the late Sir Syed C Liaqat Ali, was given only an estate for life in the suit property, and the plaintiffs as his heirs had no right to inherit it as his property." In the result, the appeal was allowed and the plaintiffs' suit was dismissed.

On a certificate granted by the High Court under Art. 133(1)(a) of the Constitution read with Sections 109 and 110 of the Code of D Civil Procedure, the plaintiffs have now come in appeal to this Court.

The main issue framed by the trial court was in these terms :

"Was the house in dispute given by the Ruler to Shri Liaqat Ali deceased absolutely or for life only."

E

The decision of this issue turns on an interpretation of the *Firman* (Ex.P-1), dated October 24, 1934 whereby the Ruler gave this house to the deceased.

The original *Firman* is in Urdu. As rendered into English by the courts below, it reads:

F

"Hon'ble Motamid-u-Sultan Nasir-ul-Mulk Syed Sir Liyaqat Ali".

"Looking into considerations with gratitude your valuable services and faithful sacrifices which you have rendered for more than 30 years and considering the economic G condition of the State you have served without remuneration for the last 2 years, your application (for pension) is granted. You are granted permission to retire in lieu of your valuable services from 1st October 1934. You should hand over charge of Mushir-ul-Muhami Rubkari Khas to Honourable Shoeb Qureshi.

H

Besides that pension you are entitled to receive under the Pension Rules of the State Treasury, you are also entitled to receive a sum of Rs. 400/- as monthly pension from Treasury of Deodhi in lieu of valuable services of Deodhi Khas *and you are (further) granted your residential house situated at Bara Mahal Shahjahanabad, as gift.*"

The original of the crucial sentence, which has been underlined, reads : A

"Aur aapka sakoonti makan waqya Bara Mahal Shahjahanabad apko inayat ataa kiya jata hai."

The *Firman* was by order published in the Bhopal Government Gazette, dated 31-10-1934, under the Heading : 'Pension to Aali Mortabat Sir Syed Liaqat Ali Saheb'. Rendered into English, its material part runs thus : B

"Now the said Hon'ble again requests for grant of his previous application on account of rendering service for more than thirty years. Hence His Highness the Ruler of Bhopal Khuld-Allah-Mulkahum considering his valuable services and his faithful sacrifices that he had served without remuneration for the last two years, taking into consideration the economic condition of the State. Considering (all his valuable services) with gratitude (His Highness the Ruler of State) grants him permission to retire from 1st November, 1934 and *also grants him his residential house situated at Bara Mahal Shahjahanabad as gift.* C D

His Highness the Ruler of Bhopal State further orders that Hon'ble Syed Sir Liaqat Ali Saheb be paid Rs. 400/- monthly pension from the Treasury of Deodhi Khas in respect of services of Deodhi Khas besides his regular pension under the Rules of the State Treasury for which he is entitled to receive from the Treasury of State". E

The original of the underlined sentence, in the Gazette Notification reads : F

"aur unko sakoonti makan waqya Bara Mahal Shahjahanabad inayat marhmat pharmate hain."

It is to be noted that the disposition evidenced by the *Firman,* Ex. P-1, is a tripartite grant made by an autocratic ruler to his subject in recognition of long, meritorious services rendered by the latter. This grant belongs to the category of disposition, which under the English Common Law are known as "Crown grants". G

The tenor and language of the *Firman,* particularly the words *"aapko Inayat Kiya Jata Hai"* unmistakably mark it out as a Sovereign grant. According to Steingass' Persian-English Dictionary "inayat" (Noune) signifies a favour, a gift, a present, a bounty"; and "Ataa" (Verb) means "to give, to confer a benefit or present with", "Ataa" (Noun) implies "Giving, a present, gift, donation, favour, a grant, endowment, concession; consideration". In the widest sense, 'grant' may comprehend everything that is granted or passed from one to another by deed. But commonly the term is applied to rights created or transferred by the Crown, e.g., grants of pensions, patents, charters franchise (See Earl Jowtt's Dictionary of English Law). H

A In England, contrary to the ordinary rule applicable to grants by, a subject, grants by the Crown are usually construed most favourably for the Crown. The rule in case of Royal Grants is that general words will not pass prerogative rights by implication.

This general rule is, however, capable of important relaxations in favour of the subject. If the intention of the Sovereign is obvious from the document which in precise, unequivocal terms defines the extent and nature of the benefit conferred, it must take effect. No question of seeking extrinsic aid to its construction arises. If the grant is for valuable consideration it must be construed strictly in favour of the grantee, for the honour of the Sovereign and where two constructions are possible, one valid and the other void, that which is valid ought to be preferred, for the honour of the Sovereign ought to be more regarded than the Sovereign's profit. Where, however, two interpretations may be given to the grant, both of which are good, that which is most favourable to the Crown is in many cases preferred (see Halsbury's Laws of England, 3rd Ed. Vol. 7, Paragraphs 669 and 670 pages 314-316).

D These rules of interpretation have been applied to Sovereign grants in India, also (see *Raja Rajinder Chand* v. *Sukhi*(1), *Gulabdas Jagjivandas* v. *Collector of Surat*(2), *Sheikh Sultan Sani* v. *Shekh Ajmoddin*(3), *Azziz-un-nissa* v. *Tasadduq Husain Khan*(4), *Ram Narayan Singh* v. *Ram Saran Lal*(5).

E It is in the light of the above principles that we have to determine whether by the *Firman*, Ex. P-1, the Ruler intended to grant a life estate or an absolute estate in the suit house.

Mr. Hardy, learned Counsel for the appellants contends that the disposition in dispute would not fall within an exception to the general F rule according to which a Sovereign grant is construed in favour of the Sovereign, because firstly, the last sentence of the *Firman*, the interpretation of which alone is in question, declares in plain, self-contained and unambiguous terms that the grant of house is an out and out gift to the grantee, and secondly, the grantor and the grantee, being Muslims, the gift would, under Mohammedan Law, have the effect of conveying an absolute heritable estate. In this connection, G support has been sought from certain observations of the Privy Council in *Sardar Nawazish Ali Khan* v. *Sardar Ali Raza*(6), which are as follows :

> "In general, Muslim Law draws no distinction between real and personal property, and their Lordships know of no H authoritative work .....which affirms that Muslim Law recognizes the splitting up of ownership of land into estates,

(1)[1956] SCR 889 as per S. K. Das J. at p. 902.
(2) 6 I.A.5-4
(3) 30 I.A. 50.
(4) 28 I.A. 65.
(5) ILR 46 Cal. 683 (P.C.).
(6) 75 I.A. 62 at 77.

or in point of quality like legal and equitable estates, or in point of duration like estates in fee sample in tail, for life, or in remainder. What Muslim Law does recognize and insist on, is the distinction between the corpus of the property itself (ayn) and the usufruct in the property (manafi). Over the corpus of the property the law recognizes only absolute dominion, heritable and unrestricted in point of time, and where a gift of the corpus seeks to impose a condition inconsistent with such absolute dominion the condition is rejected as repugnant, but *interest limited in point of time can be created in the usufruct of the property, and the dominion over the corpus takes effect subject to any such limited interests.*" (emphasis added)

Mr. Hardy refers to the letter, dated 29-6-1938 (Ex. P-3) of the Chief Engineer and Secretary, P.W.D., Bhopal whereby two maps of the house, Nawab Manzil were sent to the grantee. The portions shown in light red colour in these maps were referred to in this letter as in the "possession and ownership" of the grantee according to the Gazette Notification No. 7, dated 31st October, 1934.

As against the above, Mr. Panjwani, learned Counsel for the Respondent submits that the grant of the house is not to be dissociated from the pensionary grants; that even the last sentence of the *Firman*, read in the context along with its preamble reasonably bears only one construction viz., that a right of residence for life, to be conveyed by the Ruler to the grantee. Stress has been laid on to be conveyed by the Ruler to the grantee. Stress has been laid on the fact that there are no words such as, *nasalan-dar-nasalan, pushat-dar-pushat* etc. in the language of the *Firman* showing that absolute heritable rights in the property were conferred on the grantee. Counsel further maintains that the *Firman* represents a grant made by an absolute Ruler in favour of his subject on the occasion of the latter's retirement from service and that it was not a mere *hiba* made by one Muslim under Mohammedan Law to another Muslim. Reference to Mohammedan Law, proceeds the argument, has no relevance. It is urged that the grant being a Sovereign grant, had to be construed strongly against the grantee, and imperfections in the language of the *Firman* had to be resolved in favour of the Government, by reading it as a whole in the light of the surrounding circumstances and even the subsequent conduct of the then Bhopal Government in ejecting, Syed Mohammad Ali from the house in May, 1947. That ejectment, according to the Counsel, amounted to resumption of the grant—(by the grantor) who was then alive and was still the absolute Ruler of Bhopal state. Counsel has referred to several authorities in support of these contentions.

We are not persuaded to accept the appellant's contention that the *Firman* conveys, in precise and unequivocal terms, full and absolute ownership of the suit house to the grantee. In our opinion, the language of the last sentence of the *Firman,* which is the sheet-anchor of this contention, even by itself, does not indubitably and

A unequivocally indicate that the intention of the Ruler was to grant an absolute estate. The *Firman* is conspicuous by the non-employment of any words declaring that thenceforth the grantee would have a heritable estate in the house or that the grantor had transferred all his rights in the property, absolutely in favour of the grantee. There is no use of such words that the grant would take effect as *"nasalan-dar-*
B *nasaln"*, "from generation to generation" *"towarsan, kaiam u qaman"* "to grantee *and his heirs"* etc. pointing towards the creation of a heritable estate. Even the use of such terms by itself, has been held to be an inconclusive indication of the grantor's intention to confer absolute, heritable rights. Thus, in *Gulabdas Jagjivandas's* case (supra) despite a reference in the *sanad* to the children or descendants' of the
C grantee, the Judicial Committee held that the grant had not been made "on terms which would make them hereditary".

Again, in *Sheikh Sultan v. Shekh Ajmoddin* (supra), delivering the judgment of the Board, Lord Hannen quoted with approval, a minute dated 15-3-1922, recorded by Sir Thomas Munro in which he states that the terms in such documents (sanads) 'for ever' from gene-
D ration to generation or in Hindu grants, 'while the sun and moon endure', 'are mere forms of expression', and were never supposed either by the donor or receiver to convey the durability which they imply or any beyond the will of the Sovereign. On the authority of another minute recorded by Sir Thomas Munro, it was further observed "that while the seizure of private property by the native princes would have
E been considered unjust by the country, Jagir grants were not regarded by the people in the light of private property".

It is not necessary to multiply authorities with regard to the construction of such customary terms which could possibly be indicative of the grantor's intention to make a heritable grant, because the *Firman* Ex. P-1, is benefit of all such terms. It will be sufficient to say
F that the language of the *Firman* does not in clear and unambiguous terms express an intention to create an absolute estate in favour of the grantee and his heirs. The *Firman* has therefore to be construed in accordance with the well-established rule of construction applicable to Sovereign grant.

Another cardinal canon of interpretation to be borne in mind
G is that in order to ascertain the real intention of the grantor, the *Firman* has to be read as a whole. It will not be correct- as the appellants want us to do to dissect the *Firman* into three water-tight compartments or to read last sentence of the *Firman* out of the context. It is also permissible to consider the surrounding circumstances and the occasion on which this grant was made, as legitimate aids to construction of the *Firman* (see *Gulabdas Jagjivandas* v. *Collector of Surat* (*supra*).
H

The occasion for the grant as apparent from the preamble of the *Firman*, Ex.P-1, (reproduced in the Notification Ex.P-2) was that the grantee, Sir Liaqat Ali, having attained the age of superannuation, was retiring with the permission of the grantor, after putting in "valuable" and "faithful" service for more than thirty years, including two years for which he served without remuneration, in view of the

poor economic condition of the State. An analysis of the *Firman* will show that it confers three-fold benefits on the grantee. Firstly, it grants him such pension as would be admissible under the Service Rules. This he would draw from the State Treasury. Secondly, in addition to the first, it grants him pension at the rate of Rs. 400/- per month which the pensioner would be entitled to draw from the Deodhi Treasury *i.e.*, the Privy Purse of the Ruler. Thirdly, it grants him a beneficial interest in the residential house, in these terms : "*Aur aapka sakoonti makan waqya Bara Mahal Shahjahanabad apko inayat ataa kiya jata hai*".

As is indicated in the *Firman* (Ex.P-1) (P-2) Notification in making this tripartite grant the Ruler was actuated by consideration of gratitude for the valuable services rendered by the grantee. The object of conferring these three-fold benefits was the same, namely, to secure to the retiring servant a handsome maintenance and comfortable residence for the rest of his life. In other words, all the three benefits granted under this *Firman* were cognate benefits, arising out of the same occasion, and made with the same object in view viz., to enable the grantee to live comfortably in retirement. These related benefits could be compendiously described as "retirement benefits". The first two benefits were indisputably pensionary benefits enuring only for the life-time of the grantee. All the three kindred benefits, including the one in question, were expressly meant for the *person* of the grantee. This is clear from the word '*apko*' which means "to you" in the phrase "*apko inayat ataa kiya jata hai*" The conjunction "aur" (and) at the commencement of the last sentence of the *Firman* inextricably links the grant of interest in the residential house, with the pensionary benefits conferred in the foregoing parts of the *Firman*. In short, all the three-fold benefits granted under this *Firman* are offspring of the same genus. The language of the *Firman* relating directly to the grant in question therefore takes its colour from the preceding parts of the *Firman* relating to the pensionary benefits conferred on the grantee for life. Thus if the crucial words quoted above, are construed in the context of the akin grants, and—according to the general tenor of the *Firman* as a whole, it becomes clear that the intention of the Ruler was to grant only a right of residence limited to the life time of the grantee—and not an absolute estate in the house. The surrounding circumstances also confirm the interpretation adopted by us. The first such circumstance was that at the time of the grant, the grantee had no issue, nor any near relation. Indeed, he died widowless and issue-less. In this context, coupled with the omission of any words such as to "grantee and his heirs" or "nasalan-dar-nasalan" indicating the grant to be heritable, it would be reasonable to hold that the grant was intended to be for life only.

There is yet another circumstance which points towards the same conclusion. It is that at the time of the grant the grantee was already residing in the suit house. In this context, the word "*sakoonti*" ('residential) in the last part of the Firman used in association with 'makan' (house) assumes significance. It suggests that the intention of the

A grantor was to convey to the grantee no more than a right of residence in the house which the latter was already enjoying.

The letter Ex.P-3 written by the Chief Engineer on 29-6-1938 is of hardly any assistance in construing the grant made three or four years earlier. It could not be treated as contemperaneous conduct of the grantor or his agent, which could legitimately be taken into consideration in construing the grant.

On parity of reasoning, it is doubtful whether the fact of eviction of Syed Mohammed Ali from the suit house, about two months after the death of the grantee and about 15 years after the grant, could justifiably be called in aid as a "surrounding circumstance" to interpret the *Firman* dated 24-10-1939. The High Court has taken this circumstance also into account. We need only say that even after excluding this circumstance, there remains sufficient and sound foundation in the language of the *Firman* and the contemperaneous surrounding circumstances, including the common genus, the same occasion and purpose of the three-seeded grant, to hold that the Ruler had conferred only a limited estate in the suit property for the life-time of the grantee.

The argument advanced on behalf of the appellants that the grant in question was a 'hiba' made in accordance with Mohammendan Law by one Muslim toanother, has been stated only to be rejected. To all intents and purposes, it was a grant made by an absolute Ruler to his subject who had rendered long meritorious services, on the eve of his retirement. Reference to Muslim law is herefore misconceived. We may, however, say in passing that even according to the observations of the Privy Council relied upon by the Counsel, creation of an interest limited in point of time, in the usufruct of the property is not necessarily repugnant to Muslim Law.

Mr. Panjwani has advanced an alternative argument also, to support the decision of the High Court. The contention is that even if it is assumed that the house had been given to Sir Liaqat Ali absolutely, then also the grant had come to an end on resumption of the possession of the house by the Government of Bhopal in 1947, and thereafter the grant continued to be *non-est* because after the merger of the State of Bhopal on 1-6-1949, it was not recognised by the Government of India or by the new Government of Madhya Pradesh after Bhopal became a part of that State on 1-11-1951. Rather, as per Ex.P-6, the new Government after the disappearance of Bhopal State from the scene, repudiated the grant. In these circumstances, submits the Counsel, the appellants did not carry with them the right, if any, they had under the grant as subjects of the Ex-Sovereign Ruler of Bhopal and after the extinction of Bhopal State and its Ruler, they had only such rights as were granted or recognised by the new Sovereign *i.e.* the Central Government. According to the Counsel, the plaintiffs' claim was not enforceable in the municipal courts. Reliance has been placed on the decision of this Court in *State of Gujarat* v. *Vora Fiddali Badruddin Mithibarwale*(1).

[1] [1964] 6 S.C.R. 461 at 551.

There is no foundation for the plea either in the pleadings or in the issues. We therefore do not allow it to be raised for the first time in this Court. A

For the foregoing reasons, the appeal fails and is dismissed with costs.

P.H.P. *Appeal dismissed.* B