1961

April 24.

NAV RATTANMAL AND OTHERS

v.

THE STATE OF RAJASTHAN

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Limitation—Sixty years for suits by the Government—Constitutionality of—Indian Limitation Act, 1908 (IX of 1908), Art. 149—Constitution of India, Art. 14.

The Government filed a suit on the basis of a security bond executed by a Government Treasurer and certain sureties who joined in the execution of the bond. The contention in defence, *inter alia*, was that art. 149 of the Indian Limitation Act prescribing a 60 years period of limitation for suits by the Government was unconstitutional as violative of Art. 14 of the Constitution and as such the suit was barred under art. 83.

Held, that statutes of limitation are designed for the beneficent public purpose of preventing the taking away from one what he has been permitted to consider his own for a long time and on the faith of which he plans his future life.

If the suit was by a private individual the suit would have fallen under art. 83 and would have been barred by it but different considerations arise in the case of the State and there is a distinction between claims by the Government and those of private individuals. Article 149 of the Limitation Act, 1908, which fixes a period of 60 years for suits by the Government has a reasonable basis of classification between the Government and private individuals, and the exact period that should be allowed to the Government to file a suit would be a matter of legislative policy and as such its constitutional validity cannot be questioned under Art. 14 of the Constitution.

Purushottam Govindji Halai v. *Desai*, [1955] 2 S.C.R. 887, *Collector of Malabar* v. *Ebrahim*, [1957] S.C.R. 970 and *Mannalal* v. *Collector of Jhalwar*, [1961] 2 S.C.R. 962, applied.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 454 of 1957.

Appeal from the judgment and order dated December 16, 1954, of the Court of Judicial Commissioner, Ajmer in Civil Appeal No. 134 of 1952.

A. V. Viswanatha Sastri, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the appellants.

G. C. Kasliwal, Advocate-General, Rajasthan, S. K. Kapur and *T. M. Sen*, for the respondent.

1961. April 24. The Judgment of the Court was delivered by

AYYANGAR, J.—This is an appeal on a certificate granted by the Judicial Commissioner, Ajmer, and is directed against the judgment of that Court dated December 16, 1954 by which the decree in favour of the respondent—Union of India—was affirmed.

Seth Lal Chand Kothari—the original first appellant in the appeal before us (he died pending this appeal and his heirs have been brought on record as his legal representatives — appellants 1 to 6) was appointed by the Commissioner Ajmer-Merwara as Government Treasurer, Ajmer-Merwara, by an order dated February 20, 1940, the treasuries to be under his charge being two—that at Ajmer and a sub-treasury at Beawar. Before accepting office he had, under the rules, to deposit Government promissory notes to the extent of Rs. 60,000 and also execute a Security Bond for a like amount with two sureties to cover any loss to the Government in these treasuries. He accordingly made the deposit, and a security bond was executed by him on February 27, 1940 with Seth Phool Chand—who is now the 7th appellant in the appeal and one Seth Kanwarlal Ranka who died even before the suit and was not impleaded in it. Thereupon Lal Chand Kothari was directed to take charge of the office as Treasurer and he did so on March 6, 1940.

We are not concerned with the treasury at Ajmer, but only with that at Beawar. Lal Chand, at the time of his taking charge, executed a receipt headed "charge-report" and in it is recited that he had taken over from the previous incumbent (M. L. Patni) the amount of cash which tallied with what had to be in the treasury according to the books. Nothing happened between 1940 and 1948 and the business at the treasury appeared to be proceeding regularly and according to the rules. It may be mentioned that there were the usual periodical checks and audits by

1961

Nav Rattanmal
v.
State of Rajasthan

Ayyangar J.

Government officials but no impropriety was discovered during these checks or audits. On March 31, 1948, the Extra Assistant Commissioner, Ajmer, made a check of the treasury at Beawar. The treasury staff who ought to have been there were however absent in spite of their having had prior intimation of his arrival and thereupon he directed the treasury to be sealed. There were two cash chests at this sub-treasury—one secured with a single lock, the key of which was with the staff of the Treasurer and the other with double-locks, the keys of which were held, one by the employee of the Treasurer and the other by the Government Treasury Officer—the Tahsildar. A verification of the balance in the two chests disclosed that a sum of 7 annas, 9 pies was missing from the single-lock chest and Rs. 84,215 from the chest with the double-lock. The Government thereupon took proceedings to realise the missing amount from the security of Rs. 60,000 which had been under deposit. The Government securities were sold and they realized about rupees 58 thousands and odd leaving a sum of Rs. 25,786-13-9 still due. The Union of India thereupon filed a suit—Civil Suit 125 of 1951 before the Sub-Judge First Class, Beawar on the security bond dated February 27, 1940 against Lal Chand Kothari and Seth Phool Chand for recovery of this sum. Several defences were raised by the defendants but they were all rejected by the learned Subordinate Judge who granted the respondents a decree in terms prayed for in the suit. The defendants filed an appeal to the Judicial Commissioner who dismissed it, but having regard to the fact that some of the defences turned on the interpretation of the security bond dated February 27, 1940, granted a certificate under Art. 133(1) of the Constitution and that is how the appeal is now before us.

Neither the factum of the loss by embezzlement nor its amount is in question, and the only points raised for consideration are. (1) whether on the terms of the bond the decree in favour of the appellants could be sustained; (2) whether the claim in the suit was not barred by limitation. The argument on this second

point was that if art. 83 of the Indian Limitation Act governed the claim it would be barred, and that the provision contained in art. 149 prescribing a 60-year period of limitation for suits by the Government was unconstitutional as violative of Art. 14 of the Constitution. It is this last plea that has led to the appeal being heard by this larger Bench.

As regards the first point that the suit claim was not comprehended within the terms of the security bond, learned Counsel made three submissions: (1) In order to render the defendants liable, the loss sustained by the Government must be proved to have occurred on or after March 6, 1940 on which date alone Lal Chand Kothari took charge of the treasury. Though loss to the extent set out in the plaint did occur at the treasury in Beawar, learned Counsel urged, the plaintiff-respondent had not proved that it occurred after March 6, 1940. In other words, the argument was that there was no physical checking on March 6, 1940 when he took over and because of this one could not be certain whether it was a loss which had occurred during the period of the previous incumbent in office or could with certainty be attributed to the period subsequent to March 6, 1940. This argument was rejected by the courts below and, in our opinion, correctly. In the face of the receipt executed by Lal Chand Kothari it would not be open to him to contend that the recitals in it were not correct, and in any event it would be for him to show that it was incorrect and, of course, there was no possibility of his establishing this.

(2) It was next urged that on the terms of the Bond read in the context of the surrounding circumstances Lal Chand Kothari would be liable only for the deficiency in the chest with the single-lock and not for the loss or embezzlement or deficiency in the other chest with the double-lock. The whole basis of this argument was that the security deposit of Rs. 60,000 and the security bond for the like amount executed by the Treasurer was an indication that it was with reference to the amount which was the maximum in the chest under the single-lock and from this feature it was

1961

Nav Rattanmal v. State of Rajasthan

Ayyangar J.

urged that it was the intention of the parties that Lal Chand Kothari would not be responsible for any embezzlement, loss or deficiency in the other chest. This submission is without any foundation, because the liability under the Bond would depend upon its terms and in the face of the language used in the document learned Counsel realised that the submission could not be seriously maintained.

(3) The last submission under this head was that the loss having occurred in the chest with the double-lock, this could not have been without the connivance of Government officials and that therefore the liability of the Treasurer was excluded. Learned Counsel also drew our attention to the fact that the terms of the bond made Lal Chand liable even for embezzlement by government officers, notwithstanding that he had no control over them. But if Lal Chand agreed to those terms—and this is not disputed, the terms must prevail. Apart from the terms of the security bond however, it would be apparent that if the key of one of the locks was with the employee of the Treasurer the defalcation could not have occurred without such employee's connivance or negligence. If so, the fixing of liability upon the employer could not be characterised even as unreasonable apart from the liability flowing from the terms of the Bond, and such a vicarious liability for the negligence or misconduct of his servants, is not lessened by reason of the assistance or negligence of Government officials.

These exhaust the points urged based on the terms of the Bond. It remains to deal only with the contention that the claim is barred by Limitation under art. 83 of the Limitation Act on the plea that art. 149 of the Limitation Act which fixes a period of 60 years for suits by the Government is unconstitutional as violating Art. 14 of the Constitution. It is urged that there is no rational basis for treating claims by Government differently from those of private individuals in the matter of the time within which they could be enforced by suit.

Learned Counsel urged that statutes of limitation were statutes of repose and enacted to ensure that stale

claims were not agitated, so that after a reasonable length of time people might proceed on the footing that they would not be held liable for possible claims against them. Basing himself on these principles, the argument of the learned Counsel was that for the purpose of agitating claims no distinction could be drawn between Government and private individuals and that on no rational basis could a legislation which permitted a longer period of limitation for claims by the State be sustained.

It is, no doubt, true that Lord Kenyon described statutes of limitation as "Statutes of repose" (vide per Dallas, C. J. in *Tolson* v. *Kaye* (1)) and Bramwell, B. as "Statutes of peace" (*Hunter* v. *Gibbons* (2)), though sometimes contrary opinions have been expressed. In *re Baker* (3), Cotton, L. J. observed that pleas of limitation would never be looked upon with any favour since they are used to defeat debts clearly due. It is however unnecessary to examine further the theory underlying statutes of limitation. We shall proceed on the generally accepted basis that they are designed to effectuate a beneficent public purpose, viz., to prevent the taking away from one what he has for long been permitted to consider his own and on the faith of which he plans his life, habits and expenses.

This however does not militate against there being a rational basis for a distinction being drawn between the claims of the State and the claims of the individual in the matter of a provision of a bar of limitation for enforcing them. In considering this matter two points have to be kept separate: (1) whether a distinction could be drawn or a classification supported between the provision of any variation in the time that should be available for enforcing claims by private individuals and claims by the State, (2) whether, if such a classification were good, the period of 60 years provided by art. 149 of the Indian Limitation Act is such a long period of time as to be unreasonable. We are drawing attention to the distinction between these two points because learned Counsel laid

(1) (1822) 2 Brod. & B. 217, 223: 129 E.R. 1267, 1269.
(2) (1856) 26 L.J. Ex. 1, 5. (3) (1890) 44 Ch. D. 262, 270.

1961

Nav Rattanmal
v.
State of Rajasthan

Ayyangar J.

much stress on the fact that the period of limitation fixed by art. 149 was 60 years and that this was an unreasonably long period of time. If learned Counsel is right in his submission that there is no rational basis for placing private individuals and the Government in different classes while framing a legislation providing for limitation for actions he might succeed; but if he is wrong there and the correct view is that there is a rational basis of classification, then the period that should be allowed to the Government to file a suit would be a matter of legislative policy and could not be brought within the scope or purview of a challenge under Art. 14 or indeed of any other article in the Constitution. It is sufficient therefore if we confine ourselves to the first point, viz., whether there is a rational basis for treating the Government differently as regards the period within which claims might be put in suit between the Government on the one hand and private individuals on the other.

First and foremost there is this feature that the Limitation Act, though a statute of repose and intended for quieting titles, and in that sense looks at the problem from the point of view of the defendant with a view to provide for him a security against stale claims, addresses itself at the same time also to the position of the plaintiff. Thus, for instance, where the plaintiff is under a legal disability to institute a suit by reason of his being a minor or being insane or an idiot, it makes provisions for the extension of the period taking into account that disability. Similarly, public interest in a claim being protected is taken into account by s. 10 of the Act by providing that there shall be no period of limitation in the case of express trusts. It is not necessary to go into the details of these provisions but it is sufficient to state that the approach here is from the point of view of protecting the enforceability of claims which, if the ordinary rules applied, would become barred by limitation. It is in great part on this principle that it is said that subject to statutory provision, while the maxim *vigilantibus et non dormientibus jura Subveniunt* is a rule for the subject, the maxim *nullum tempus occurit regi*

is in general applicable to the Crown. The reason assigned was, to quote Coke, that the State ought not to suffer for the negligence of its officers or for their fraudulent collusion with the adverse party. It is with this background that the question of the special provision contained in art. 149 of the Act has to be viewed. First, we have the fact that in the case of the Government, if a claim becomes barred by limitation, the loss falls on the public, i.e., on the community in general and to the benefit of the private individual who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large. Next, it may be mentioned that in the case of governmental machinery, it is a known fact that it does not move as quickly as in the case of individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued—Government being an impersonal body, before a claim is launched there has to be inter-departmental correspondence, consultations, sanctions obtained according to the rules. These necessarily take time and it is because of these features which are sometimes characterised as red-tape that there is delay in the functioning of government offices. It is precisely for this reason that we have from the earliest Civil Procedure Codes provisions which find place in the Code of 1908, like O. 27, rr. 5 and 7 reading:

"O. 27. r. 5. The Court in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Government and may extend the time at its discretion.

O. 27. r. 7(1). Where the defendant is a public officer and, in receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to

1961

Nav Rattanmal
v.
State of Rajasthan

Ayyangar J.

grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary."

These matters apart, the ratio underlying the special provisions for summary recovery of amounts due to Government without resort to suits by a procedure not available for enforcing the dues of private individuals, like the "Revenue Recovery Acts" and "Public Demands Recovery Acts" which have been on the statute book for over a century is also similar, viz., the interest of the public and of the community in realising what is due to it expeditiously; and the constitutional validity of such provisions have been sustained by this Court. In *Purshottam Govindji Halai* v. *Desai* (1) this Court held that s. 13 of the Bombay Land Revenue Act, 1876, by virtue of which a person had been arrested in pursuance of a warrant issued for recovery of a demand certified under s. 46(2) of the Indian Income-tax Act, did not offend Art. 14 of the Constitution. Similarly, in *Collector of Malabar* v. *Ebrahim* (2) the arrest of a defaulter in respect of an income-tax demand under s. 48 of the Madras Revenue Recovery Act was held not to offend Art. 14 of the Constitution. Perhaps another decision of this Court of more immediate relevance, in which the point now raised that there is no rational basis for distinguishing between the claims of the Government and the claims of private individuals—was considered and negatived, is that in *Mannalal* v. *Collector, Jahalwar* (3) in which judgment was delivered on December 7, 1960. In this last case it was urged before this Court that the summary mode of recovery of amounts due to the Government for which provision was made by the Rajasthan Public Recovery Act there impugned —a mode of recovery which was not available to the private citizen—contravened the equal protection of

(1) [1955] 2 S C.R. 887. (2) [1957] S.C.R. 970.
(3) [1961] 2 S.C.R. 962.

1961

Nav Rattanmal
v.
State of Rajasthan

Ayyangar J.

the laws guaranteed by Art. 14 and this contention was repelled. The argument of learned Counsel for the appellants has therefore to be rejected both on the ground of principle as well as on the ratio underlying the decisions of this Court.

The appeal fails and is dismissed with costs.

Appeal dismissed.

1961

April 25.

JAVER CHAND AND OTHERS

v.

PUKHRAJ SURANA

(B. P. SINHA, C. J., K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Document—Hundi—Inadequately stamped — Exhibited — Admissibility—Objection when to be raised—Courts, if can revise or review order admitting document—Marwar Stamp Act, 1914, ss. 9 and 11—Marwar Stamp Act, 1947, ss. 35 proviso (a), 36.

The respondent admitted the execution of two Hundis in suit which were tendered and marked as exhibits but denied consideration and raised the plea that the hundis exhibited were inadmissible in evidence as at the time the suit was filed in 1949 they had not been stamped according to the Stamp Law. When the hundis were executed in December, 1946, the Marwar Stamp Act of 1914 was in force and ss. 9 and 11 of that Act authorised the court to realise the full stamp duty and penalty in case of unstamped instruments produced in evidence, whereupon the documents were admissible in evidence.

The High Court pointed out that after coming into force of the Marwar Stamp Act, 1947, (Similar to Indian Stamp Act) which had amended the 1914 Act, the hundis in question could not be admitted in evidence in view of the provision of s. 35 proviso (a) of the Marwar Stamp Act, 1947, even on payment of duty and penalty and the appellant could not take advantage of s. 36 of the 1947 Stamp Act, because the admission of the two hundis was a pure mistake as the Trial Court had lost sight of the 1947 Stamp Act and the appeal Court could go behind the orders of the Trial Court and correct the mistake made by that Court.

Held, that once the Court, rightly or wrongly decided to