STATE OF MADHYA PRADESH

v.

MAHARANI USHADEVI

(Civil Appeal Nos. 557-558 of 2012)

JULY 15, 2015

[RANJAN GOGOI AND N.V. RAMANA, JJ.]

Constitution of India, 1950 – Art.363 – Applicability of – Suit for declaration of title and permanent injunction – By the legal heir of Maharaja of Holkar – Claiming that the property in question which was managed by the Household Department of the Holkar State was the exclusive and individual property of the Maharaja and not the property of the appellant-State – In the alternative seeking declaration to be 'Bhumiswami' of the land u/s. 158(2) of Land Revenue Code – Maintainability of the suit – Held: The right of the plaintiff flows from the Covenant whereby the Maharaja of Holkar and the other princely States agreed to merge with the dominion of India – Therefore, the relief sought by the plaintiff falls within the ambit of Art.363 and hence the suit is not maintainable – Since the claim of plaintiff as 'Bhumiswami' is by way of the Covenant which is disputed and the relief of settling these disputes is barred u/Art.363, one cannot claim to be 'Bhumiswami', independent of the Covenant – Madhya Pradesh Land Revenue Code, 1959 – s.158(2).

Allowing the appeals, the Court

HELD: 1.1 As per article 12(2) of the Covenant (whereby the Maharaja of Holkar with other princely States agreed to merge with the Dominion of India), the Maharaja of Holkar has furnished the details of the properties under different Heads. The Suit scheduled properties which are in possession of the plaintiff finds

A no mention in the entire list of properties, but the plaintiff derives his title to the property from Clause 14 of the list of properties which speaks about all properties under the control of the Household Department. The Covenant is the source of title for the plaintiff. By all means the B right of the plaintiff flows from the Covenant by virtue of which the plaintiff claims title over these properties, which according to her are declared as private properties of the Ruler. At any stretch of imagination, it cannot be said that the right of the plaintiff is a pre-existing right. C [Paras 28 and 29] [756-C-D, F; 757-A-C]

1.2 A bare perusal of Article 363 of the Constitution and the relief sought by the plaintiff in the Suit in unequivocal terms attracts the bar contained in Article D 363. Covenant is an act of State and any dispute arising out of its terms cannot form the subject matter in any Court including the Supreme Court, and there cannot be any implied recognition of the property as private property at any later stages when an opportunity had E already been granted to raise issue in terms of clause 3 of Article 12 before defined period; above all, the properties do not find place in the Covenant. In the present case, interpretation of the Covenant on the part of the plaintiff that all properties which are in the custody F of the Household Department are the personal properties of the Ruler, an implied recognition is impermissible. Hence, the relief in the Suit falls within the ambit of Article 363 of the Constitution of India and G the Suit is not maintainable. [Paras 30 and 34] [757-D; 759-E-G, H; 760-A]

Draupadi Devi and Others vs. Union of India and others **2004 (4) Suppl. SCR 223: (2004) 11 SCC 425;** *Madhav Rao Scindia vs. Union of India* **AIR 1971 SC 53: 1979** H **(2) SCR 62;** *Karan Singh (Dr.) vs. State of J&K* **2004**

(1) Suppl. SCR 43: (2004) 5 SCC 698 – relied on. A

2. As per Section 158(2) of Madhya Pradesh Land Revenue Code, 1959 in order to confer the rights of *Bhumiswami,* a Ruler should be holding land or he should have been entitled to hold land as such Ruler by B virtue of a Covenant or agreement entered into by him. The plaintiff/respondent cannot seek the status of *Bhumiswami* independent of the Covenant because the rights under Section 158(2) arise out of the Covenant itself. The source to hold the land arises by virtue of a C Covenant. When the right so claimed by way of Covenant is disputed and the relief of settling these disputes is barred under Article 363 of the Constitution, one cannot claim to be "*Bhumiswami*" under Section 158(2) of the Madhya Pradesh Land Revenue Code, independent of D the Covenant. [Para 40] [762-H; 763-A-C]

3. All the rights whichever pleaded by the plaintiff are the rights flown only from the Covenant. As provided under clause 12(1) of Covenant, admittedly by the letter E dated 29-9-1962 the respondent/plaintiff claimed the title by way of Covenant and not by any such tenancy rights. Hence, the respondent plaintiff cannot claim any right of tenancy over the Suit schedule properties and such plea is misconceived and she is estopped from raising F such a plea. [Para 39] [762-C-D]

4. Even assuming that the properties in question are under the control of the Household Department, still the plaintiff cannot succeed for the reason that Maharaja G of Holkar in the list of properties furnished has failed to mention these properties specifically, and interpretation of Covenant is not permissible as per settled law. [Para 38] [768-A-B]

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A 5. Despite all the factors that the Maharaja and the plaintiff were in continuous possession of property and paid Tauzi for the properties, however long the plaintiff's possession may be and paying of the taxes will not give her any right seeking declaration of B ownership when these properties are part of a Covenant and calls for an interpretation of the Covenant. In addition to this, the plaintiff wrote a letter to the Additional Chief Secretary, Government General, Administrative Department, Bhopal, dated 1st October 1962, wherein she C requested for a declaration of the Suit scheduled properties as the private properties as declared by the Maharaja of Holkar which clearly shows that the whole cause of action and the reliefs sought for in the Suit are based on the Covenant and the rights flown from the D Covenant. [Para 37] [761-D-G]

6. It is settled law that parties are governed by their pleadings and the burden lies on the person who pleads to prove and further plaintiff has to succeed E basing on the strengths of his case and cannot depend upon the weakness of the defendant's case. The State having alleged several things, has failed to mark any document to show that the properties were transferred to the Forest Department and the retransfer in the year F 1951 was without any authority of law. Though the State has filed certain documents before this Court, but as they are not part of the evidence, they cannot be looked into. [Para 35] [760-E-G]

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Case Law Reference

2004 (4) Suppl. SCR 223	relied on.	Para 30
1979 (2) SCR 62	relied on.	Para 32
2004 (1) Suppl. SCR 43	relied on.	Para 33

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 557-558 of 2012

From the Judgment and Order dated 13.08.2010 and 11.02.2011 in Review Petition No. 396 of 2010 and First Appeal No. 421 of 2001 of the High Court of Madhya Pradesh, Bench at Indore

T. R. Andhyarujina, C.D. Singh, Sunny Choudhary, Shomik for the Appellant.

C. A. Sundaram, Puneet Jain, Manoj Shrimal, Manu Maheshwari, Abhinav Gupta, Z. Anayat, Rohini Musa, Pratibha Jain for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. These appeals by special leave have been filed against the impugned judgment and decree dated 13.08.2010 and 11.02.2011 of the High Court of Madhya Pradesh, Bench at Indore in First Appeal No. 421 of 2001 and in Review Petition No. 396 of 2010 respectively by which the High Court while setting aside the judgment and decree of the learned Trial Court passed in favour of the appellant/State, decreed the Suit for declaration of title in favour of the respondent and also dismissed the review petition preferred by the appellant/State.

2. The facts leading to these appeals, in brief, are that the respondent/plaintiff who was the daughter and reportedly sole heir of Maharaja Yashwanth Rao Holkar, the erstwhile Ruler of Holkar State filed the present Suit on 7th September 1964 seeking the relief of declaration of title and permanent injunction in respect of the plaint schedule properties, i.e, *Birs* known as Bijasan, Ashapura, Bercha, Mohna and Gajihata and alternatively sought declaration that the plaintiff is the Government lessee or a *Bhumiswami* of the Suit schedule

properties. It is the specific case of the plaintiff that these *birs* were initially under the control of the Household Department of the Holkar State. Sometime during the existence of the Holkar State, the work of cutting and collecting the grass of these four *birs* was made over to the Military Grass Farm of Indore with a direction that the quantity of grass required for the purpose of household has to be supplied by them.

3. During the lifetime of Maharaja Yashwanth Rao Holkar, he was depositing Tauzi assessment/revenue charges with the treasury of Holkar State. On 31-08-1945, these *birs* were transferred to the Army Department of the Holkar State, for harvesting grass, for a period of one year on experimental basis. Again on 22-01-1951, these *birs* were transferred to the Maharaja and from that date, these *birs* are in continuous possession and enjoyment of the plaintiff's family till the filing of the Suit. In the year 1948, Holkar State along with the other princely States was merged with the Dominion of India as per the Covenant dated 16th June, 1948, which was later on re-organised as a part of the present State of Madhya Pradesh. As per Article XII of the Covenant entered between Maharaja Yashwanth Rao Holkar and Government of India, Ministry of States, by communication dated 7th May, 1949, the land in question being managed by the Household Department became the exclusive and individual property of the father of the plaintiff. As the property belongs to the Maharaja, even the Government demanded revenue qua the said land which was duly deposited by the plaintiff's father as well as the plaintiff.

4. It is further case of the plaintiff that the State Government appears to have passed some orders on May 2, 1964 basing on which, the Collector, Indore had issued a notice on May 16, 1964 requiring the plaintiff to handover the possession of the land in question on the ground that the State Government has declared the Suit schedule property as the property of the State. According to the plaintiff, she holds these

lands either as an owner or as a Government lessee, and Government has no jurisdiction to pass such an order. Then the plaintiff moved the Sub-Divisional Magistrate under Section 57 of the Madhya Bharat Land Revenue Code to adjudicate the dispute, but the same was rejected on the ground that they had no jurisdiction. Hence, the plaintiff was constrained to file the present Suit seeking the relief of declaration and injunction.

5. The appellant/defendant/State contested the Suit by filing written statement disputing the ownership of plaintiff over the Suit land. According to the defendant, Maharaja Yashwant Rao Holkar was never the owner of the Suit scheduled property. Hence, the question of plaintiff succeeding to the property does not arise. The *birs* were the property of the Forest Department of the Holkar State. On August 21, 1926, the Cabinet of Holkar State transferred Bijasan Bir to the Household Department, and later the remaining *birs* were also transferred on settlement of assessment. Later these *birs* were transferred to the Forest Department in the year 1930. Again in the year 1943, they were re-transferred to the Household Department. It is the case of the defendant that in the year 1945, all *birs* were with the Army Department of the Holkar State, which was made responsible to supply grass to the Household Department. At the time of merger of Holkar State with Dominion of India, these *Birs* were with the Army Department and hence cannot be treated as private properties of the Maharaja as per Item No.14 of list of private properties and apart from all these grounds, it was urged that the Suit is not maintainable in view of the bar under Article 363 of the Constitution of India. Basing on the above pleadings, the defendant sought dismissal of the Suit.

6. It appears that in the year 1979, Section 158(2) was inserted in Madhya Pradesh Land Revenue Code, 1959. As per the said provision, the Ruler of an Indian State, forming part of State of Madhya Pradesh, who at the time of coming into force of the Act was holding land or was entitled to hold

A land by virtue of the Covenant shall, as from the date of coming into force of the Code, becomes a *Bhumiswami* of such land. The plaintiff also seeks shelter under the said provision.

7. On behalf of the plaintiff, several voluminous B documentary evidence were marked as exhibits, while on behalf of the defendants, only two documents were marked. The Trial Court has framed as many as 20 issues, appreciated both the documentary and oral evidence at length and finally by judgement and decree dated 9th march, 1992, partly allowed C the Suit filed by plaintiff in respect of three *Birs* and Ganjihata, and consequential permanent injunction was also granted. Against this, the State has preferred First Appeal No.148 of 1992, and the plaintiff has filed First Appeal 119 of 92. The appellate Court by its judgement dated 24-03-2000 has set D aside the order of the Trial Court and remanded the matter for fresh adjudication by framing another four additional issues for trial. At the time of remand, it was further observed by the appellate Court that while deciding the matter again, the Trial Court will not record any further evidence nor will allow the E parties to make any amendments to the pleadings.

8. The Trial Court after remand framed 24 issues, and after appreciating both oral and documentary evidence, dismissed the Suit by judgement and decree dated 17-08- F 2001. It is the specific finding of the Trial Court that the transfer of Suit schedule lands to the Household Department in the year 1951 is without any authority and therefore bad; the Ruler paid the Tauzi from 1951, but there is no evidence to show that Tauzi was paid for the period prior to 1951; the G correspondence entered into by the plaintiff and her father with the Government showed that the Suit scheduled properties were not included in Item No.14 of exhibit P.78; the plaintiff was not in possession of the Suit schedule properties either in the form of ordinary tenant, Government lessee or land H owner; that the Suit schedule lands were not allotted to the

Forest Department by the State; and ultimately, the Trial Court held that in view of bar contained in Article 363 of the Constitution of India, the Suit is not maintainable.

9. Against the said judgement and decree of the Trial Court, the plaintiff preferred First Appeal No. 421 of 2001. The learned Judge settled the following two issues for consideration:

a. Whether the property in question could be treated as a private property of Maharaja Yashwanth Rao Holkar at the time of merger of Holkar State with the State Madhya Bharat on June 16, 1948?

b. Whether the bar contained in Article 363 of the Constitution of India applies to the controversy in question so as to hold the jurisdiction of the Courts as barred?

10. The learned Judge, by judgement decree dated 13th August, 2010 set aside the judgment of the Trial Court and decreed the Suit, by recording findings to the effect that on the date of merger, the Suit schedule properties belonged to the Household Department and that the land was transferred for a specific time and specific purpose; re-transfer of land on May 3rd, 1951 was in conformity with Item No.20 of Annexure to exhibit P78 which provides for steps to be taken by Madhya Bharat Government to hand over the land; By virtue of Section 158(2) of the Madhya Pradesh Land Revenue Code, the father of the plaintiff by holding the land, became a *bhumiswami*, and as such, entitled for the benefits under Section 158(2) of the Act; the Rulers who prior to their integration of their States with the Dominion of India were sovereign and after integration have become citizens of India, and their rights and obligations as citizens of India are recognized by the Constitution of India; after 1st July, 1949, even the State cannot raise the dispute,

A and mere executive order cannot be sustained unless it is supported by some authority of law; the Suit is not barred under Article 363 of the Constitution of India because it is based on the pre-existing right of the plaintiff and not based on the rights flowing from the Covenant.

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11. The learned Judge considered the judgement of this Court in ***Madhav Rao Scindia*** **vs.** ***Union of India***, AIR 1971 SC 53, ***Sawai Tej Singh*** **vs.** ***Union of India and another***, AIR 1979 SC 126, ***Draupadi Devi and Others*** **vs.** C ***Union of India and others***, (2004) 11 SCC 425, ***Dr. Karan Singh*** **vs.** ***Jammu and Kashmir and others***, (2004) 5 SCC 698 and distinguished them observing that in those cases, no declaration of properties as private properties was sought, and that the executive orders passed by the State Government D was not shown to be in accordance with law and such interpretation would lead to complete subversion of rule of law. Therefore, the dispute brought before the Court cannot be excluded from the jurisdiction of the Court on the ground that Article 363 of the Constitution of India, bars the Suit. The E learned Judge distinguished ***Sawai Tej Singh's*** case observing that in the said case, the plea of the plaintiff to recognize the properties as private properties was rejected by the Government, but in the present case, private properties F of the Ruler have already been finalized, and therefore, the ratio of the said judgment was not applicable to the case on hand; The iearned Judge, distinguished ***Draupadi Devi's*** case holding that the property in controversy in that case at no stage has been declared as the private property of the Ruler, and G hence, the said judgment was not applicable to the facts of the present case, because in the case on hand, the properties are already declared as private properties.

12. Learned Counsel for the appellant contended that H the first and foremost question that arises is whether the High

Court had jurisdiction in a dispute arising out of the Covenant dated 16.6.1948 between the Maharaja of Holker and the Government by the reason of Article 363 of the Constitution of India. The Ld. counsel states that the instant Suit falls within the two limbs of the Article 363 as the present dispute clearly arises out of the terms of the Covenant. The Trial Court, therefore, rightly dismissed the Suit of the respondent, but the High Court committed a gross error by ignoring the constitutional provisions and settled principles of law. The claim for declaration of the properties in question to be the private properties of late Maharaja in terms of Item No. 14 of the list of properties, was a dispute arising out of the terms of the Covenant, and it has been clearly mentioned in Article 363 of the Constitution that jurisdiction of the Courts to adjudicate such claims was barred.

13. Drawing support from ***Draupadi Devi*** (supra) learned senior counsel submitted that the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the Covenant, is not adjudicable by Courts being beyond their jurisdiction by reason of Article 363 of the Constitution. The origin of the Suit goes to the Government of India's letter dated 3rd October, 1963 rejecting the application of the respondent to include the disputed *birs* in the list of private properties of the Ruler under Item No. 14. Thus, the claim of the plaintiff is clearly a dispute arising out of the terms of the Covenant and jurisdiction of the Courts to adjudicate such disputes is clearly barred by virtue of Article 363 of the Constitution.

14. It is further contended that the High Court has failed to take into account the facts of the case in their true perspective and gravely erred in declaring that the *birs* in question are the private properties of late Maharaja, father of

A the respondent/ plaintiff. The properties did not figure anywhere in the list of private properties of late Maharaja, nor the *birs* were ever accepted by the State as private properties and hence the respondent had never succeeded to the ownership of these *birs*. In the guise of "interpretation of the Covenant",
B the respondent wants to usurp rights over these *birs* which are pure Government properties. Only with an ulterior motive of claiming ownership on these *birs* as if they were private properties of late Maharaja, the respondent wrote the letter dated 29th December, 1962 to the Government of India, to
C include the disputed lands in the list of private properties of the Ruler. These *birs* were in the possession of the Army Grass Farms when the Covenant was signed and after annexation, the Centre of the Madhya Bharat Army was merged with the
D Government of India and the Defence Department of the Government of India had taken over charge of these lands. When the Government of India took a decision in 1955 to close some Army Grass Farms, the disputed *birs* were ordered to be returned back to the concerned Departments of the States.
E Therefore, the lands in question were correctly and intentionally not mentioned in the list of private properties of the Ruler as the same were then subjects of the Government of India. The respondent's legal notice dated 12.6.1964 to the Collector, Indore under Section 80 of the Civil Procedure Code
F categorically states her admission to the acknowledgement that after Federal Financial Integration there was an order by the President of India dated 6.10.1955 whereby the properties in question were ordered to be vested with the Madhya Bharat Government. The Government of India, by its letter dated 3rd
G October, 1963 clearly stated that the re-transfer of possession of these disputed lands by the Holkar Army Grass Farm to the Household Department was unauthorized and has not been accepted by the Defence Ministry.

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15. Learned senior counsel further contended that the view taken by the High Court qualifying the respondent for the benefit under Section 158(2) of the Madhya Pradesh Land Revenue Code, 1959 is also arbitrary and wholly erroneous for the reason that under Section 158(2) of the Code, only the Ruler holding land by virtue of the Covenant or agreement entered by him before the commencement of the Constitution shall be a *bhumiswami*. In the present case where the applicability of rights through Covenant itself is in dispute, no *bhumiswami* rights could be granted by virtue of the Covenant. If the plaintiff had paid any revenue for these *birs* that was done only in ignorance of the fact and no rights would flow on that basis as these lands have never been given on lease by any competent authority to the plaintiff. Moreover, two *birs* namely *bijasan* and *berchha* are part of Reserve Forest Area and on them no rights would accrue to the respondent.

16. Summing up his arguments, learned senior counsel for the State, finally submitted that the High Court by wrongly appreciating the facts of the case, allowed the appeal filed by the respondent ignoring the constitutional provisions contained in Article 363, and also did not look into the grounds of review in their proper perspective, resulting in miscarriage of justice. The review of judgement on the basis of discovery of new document is also permissible in terms of Section 114 read with Order XLVII of the Code of Civil Procedure. Thus the decision of the High Court is *ultra vires* the Constitution and the impugned judgments are required to be set aside by this Court.

17. Learned senior counsel appearing for the respondent—plaintiff strongly raised an objection to the filing of certain documents by the appellant which were not exhibited before the Trial Court and submitted that when the appellant sought to place on record these documents for the first time

A along with the Review Petition, the High Court did not permit them to do so. Even while remitting the matter to the Trial Court, the High Court clearly mentioned in its order dated 24th March, 2000 that "while deciding the matter again, the Trial Court will not record any further evidence nor will allow the parties to
B make any amendments in the pleadings". The appellant did not challenge this direction of the High Court and in fact, the appellant obeying this direction, did not produce any additional evidence or document before the Trial Court when the matter was heard again by the Trial Court. After so many years of
C litigation, placing some documents on record for the first time before this Court cannot be permitted.

18. Learned counsel for the respondent has vehemently contended that the bar under Article 363 of the Constitution is
D not attracted to the present Suit as the respondent is neither seeking any insertion nor recognition of something which is already not recognised in the Covenant. The right of the respondent over the lands in dispute, as argued by the learned counsel, is not a right arising out of the Covenant, but it is a
E pre-existing right as the property in dispute always belonged to the Household Department of the then Ruler. The respondent-plaintiff is neither disputing the Covenant nor is intending to meddle with it, but only seeking to establish her
F right by the new sovereign by referring to the Covenant. The bar only relates to any change in the Covenant, whereas the respondent seeks interpretation of the same in true sense, hence the bar under Article 363 is not applicable to the present case. The only moot question is whether at the time of signing
G of the Covenant the Suit lands were under the administrative control of the Household Department or not, in the light of Item No. 14 of the list of properties furnished in terms of the Covenant. If a right is created by way of document, then enforcement can always be sought.

H **19.** It is also contended that in view of retrospective

amendment made to Section 158(2) of the M.P. Land Revenue Code, the bar under Article 363 is no longer an issue as "*bhumiswami*" rights have been conferred on the respondent. Thereby, all rights arising out of the Covenant have become part of municipal law paving way for their adjudication in a Court of law. Also in the light of fact that the Maharaja had duly paid the land revenue in respect of these properties and after his death, the respondent—plaintiff had continued to pay the land revenue and other charges towards these properties, they could be treated as personal properties of the Ruler. It is clearly available on record that in accordance with Section 158(2) of the Madhya Pradesh Land Revenue Code, 1959 the respondent's father had acquired the rights of *bhumiswami* over one of these disputed lands, namely the *Mohana Bir* as per letter dated 22nd July, 1963 of the Tehsildar of Depalpur District, Indore (Annexure R/9). The said Section confers *bhumiswami* rights on a Ruler who was holding or was entitled to hold land by virtue of the Covenant. The respondent's father being *bhumiswami* for Suit properties gave every right to the respondent to pursue the dispute, if any, over the Suit lands in a Civil Court.

20. Further, learned senior counsel contended that the Covenant had emerged pursuant to the merger of various Princely States of Central India for the formation of Madhya Bharat State. In terms of Article XII of the Covenant, a list of properties was furnished by the then Ruler which was duly approved by the Government of India and the disputed lands are *ipso facto* covered under Item No. 14 which expressly and in unambiguous terms specified that "all properties under the administrative control of the Household Department of the Holkar State". Arguing that under the heading 'Miscellaneous' in the list of properties, before mentioning the details of properties, it has been specifically noted that "the above properties claimed consist in the main, of the following:" which

A leads to the inference that the list is not a comprehensive one and the words "in the main" provides that only some prominent properties are mentioned giving scope for other properties which are not specifically mentioned in that list. Even from record, it is evident that the properties in dispute were taken B over by the Army Department of the Holkar State in the year 1945 "only as an experimental measure" for one year, meaning thereby, the actual control always remained with the Household Department of the Ruler. The communication dated 22nd January, 1951 (Annexure R/3) of Headquarters of Madhya C Bharat Force, Gwalior also supports this version, wherein it was clearly mentioned that the disputed lands were "on rent from Household Department of H.H. Indore". Other communications dated 21st May, 1951 and 30th May, 1951 of the Army Grass Farms, Indore (Annexures R/4 & R/5) also D categorically specify the handing over of these properties to the Chief Administrative Officer-in-charge, Household Department on behalf of Maharaja. In addition, Clause 20 of the list of private properties of the erstwhile Ruler makes it abundantly clear that after merger, the Madhya Bharat E Government shall hand over to the Ruler, the possession of such properties which are mentioned in the list as private properties but are under the control of Madhya Bharat Government. Accordingly, the possession of these disputed F properties was given to the Ruler on 30th May, 1951.

21. It is also urged that the right exists even independent of the Covenant as a statutory right. Respondent claims that as per Section 31 of the Indore Land Revenue and Tenancy G Act, 1931, the Household Department of the Ruler became an ordinary tenant and by virtue of Government order dated 26th August, 1926, the Household Department had to pay at settlement rates. Subsequently, after the Government of Madhya Bharat came into being under the Raj Pramukh, the H Household Department continued to be an ordinary tenant in

view of Section 54(viii) and Section 54(xviii) of the Madhya Bharat Land Revenue and Tenancy Act, 1950. Thereafter, under Section 185(1)(ii)(a) read with Section 190(1) of the Madhya Pradesh Land Revenue Code, 1959 all ordinary tenants were conferred with *bhumiswami* rights. Countering the argument advanced by the State that these properties come under the purview of reserve forest area and therefore, no *bhumiswami* rights could accrue on such lands, learned counsel submitted that the said claim has already been rejected by the Trial Court as nothing was produced by the State to establish that the land was forest land.

22. It is contented that the plaintiff's rights over the lands in dispute are therefore pre-existing rights which have been recognized by the Government of India by approving the list of properties, the Covenant and also in the light of Section 158(2) of the M.P. Land Revenue Code, 1959. Enforcement of such pre-existing rights cannot, therefore, be barred under the provisions of Article 363 of the Constitution as the right sought to be enforced is only statutory one created under a municipal law. It is evident from the material on record that the right of the respondent/plaintiff is a pre-existing right duly recognized by the sovereign and it was not created by the treaty. Relying on this Court's decision in ***Madhavrao Scindia*** (supra) learned counsel submitted that an order of an executive body is unauthorized or legislative measure is *ultra vires*, is not one arising out of any Covenant under Article 363 of the Constitution of India. In such a situation, as rightly observed by the High Court, the present dispute cannot be said to have arisen from any provision of the Covenant. Therefore, the present dispute cannot be considered to be falling under the purview of Article 363 of the Constitution and the judgment of this Court in ***Draupadi Devi*** (supra) has no application to the facts of present case. It is submitted that undisputedly the proviso to clause 3 of article XII of the Covenant prohibits any dispute to

A be raised by anyone including the State after 1st July 1949.

23. Having heard the learned senior counsel on either side, the following issues of law emerge for consideration before this Court:

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1. Whether the dispute in the present case could be ascribed to the terms of the Covenant entered into by the Ruler with the Government of India thereby attracting provisions of article 363 of the Constitution of India? If so, whether the bar on the jurisdiction of Courts as envisaged under article 363 of the Constitution of India is applicable to the present case in adjudicating the rights of the plaintiff/respondent in a Civil Suit?

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2. Whether the Court was right in extending the benefit of *bhumiswami* under section 158(2) of the Madhya Pradesh Land Revenue Code, 1959 to the plaintiff?

24. Before adverting to the various arguments advanced by the learned counsel on both side and the findings recorded by the Courts below, we would deem it appropriate to extract Article 363 of the Constitution of India, which reads as under:

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363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.:

(1) Notwithstanding anything in this Constitution but 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, *sanad* 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 was a party and which has or has been continued in

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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, *sanad* or other similar instrument.

25. A plain reading of Clause (1) of Article 363 emphatically gives the impression that no Court in this country, including this Court shall have jurisdiction to deal with any dispute arising out of treaties, agreements etc., entered into between the Rulers of erstwhile Indian States and the Government of India.

26. Coming to the facts of the present case, on 16-06-1948 through the Covenant that is exhibit P-79 Maharaja of Holkar along with other Princely States agreed to merge with the dominion of India.

27. According to Article 12 of the Covenant, the Ruler can enjoy the rights over his personal properties which are included in the Covenant for which purpose a list of his personal properties was required to be submitted to the Government. The said Article reads thus:

(1) The Ruler of each Covenanting 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 first day of August, 1948 an inventory of all immovable properties, securities and cash balance held by him as such private property.

A *(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*
B *and the decision of that person shall be final and binding on all parties concerned.*

...No such dispute shall be referable after the first day of July, 1949.

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28. As per article 12(2) of the Covenant, the Maharaja of Holkar has furnished the details of the properties under different Heads. He furnished the details under the Heads as immovable properties comprising of the properties inside the
D State, outside the State, miscellaneous and at clause 14 "certain properties under the administrative control of the Household Department of the Holkar State except such of the afore mentioned property with the Household Department as had already been transferred to the two guest houses at Indore
E viz the ones situated in the building which was known as the Indore hostel and the other in Rajender Bhavan on the Bombay-Agra road".

29. The Suit scheduled properties which are in
F possession of the plaintiff finds no mention in the entire list of properties, but the plaintiff derives his title to the property from Clause 14 of the list of properties which speaks about all properties under the control of the Household Department. The plaintiff to substantiate her case that the Suit schedule
G properties are private properties is relying upon clause 14 of the list of properties, the taxes paid by her and her father in respect of these properties, the communication dated 07-05-1948 and letter dated 30-01-1956 wherein the Suit scheduled properties were retransferred to the Household Department.
H Though lot of evidence was adduced on behalf of the plaintiff

about paying taxes to substantiate her case that the Suit scheduled properties are the private properties of the Ruler, the core issue that requires to be adjudicated is whether it is the personal property of the Ruler or the property was belonging to the State. To give any finding with regard to the ownership of the property invariably we have to look at the Covenant for the reason the Covenant is the source of title for the plaintiff. At any stretch of imagination, we cannot agree with the finding of the appellate Court that the right of the plaintiff is a pre-existing right. By all means the right of the plaintiff flows from the Covenant by virtue of which the plaintiff claims title over these properties, which according to her are declared as private properties of the Ruler.

30. A bare perusal of Article 363 and the relief sought by the plaintiff in the Suit in unequivocal terms attracts the bar contained in Article 363 of the Constitution of India. The Court below distinguished the judgment in ***Draupadi Devi's*** case that it is not applicable to the facts of the present case. We are of the considered opinion that the rule of law laid down in that case applies to the case on hand. This Court in the case of ***Draupadi Devi*** held:

> 44. "... ...The Covenant is a political document resulting from an act of State. ***Once the Government of India decides to take over all the properties of the*** **Ruler,** ***except the properties which it recognises as private properties, there is no question of implied recognition of any property as private property.*** On the other hand, this clause of the Covenant merely means that, ***if the*** **Ruler** ***of the Covenanting State claimed property to be his private property and the Government of India did not agree, it was open to the*** **Ruler** ***to have this issue decided in the manner contemplated by clause (3).*** Clause (3) of Article XII

A does not mean that the Government was obliged to refer to the dispute upon its failure to recognise it as private property. ***Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute*** B. ***arising out of the terms of the Covenant and, therefore, not adjudicable by municipal courts as being beyond the jurisdiction of the municipal courts by reason of Article 363 of the Constitution***".

C **31.** The above ratio laid down by this Court makes one to understand that prior to Covenant, the ownership of all the properties remain vested with the Ruler, but once the Covenant is entered into, the Government takes over all the properties except those which the Government recognises as private D properties of the Ruler. This court had categorically held that ***there cannot be any implied recognition of the property as private property*** at any later stages when an opportunity had already been granted to raise this issue in terms of clause (3) of Article 12 before defined period. In the case on hand E also, similar clause existed where a dispute to recognise a property as private property could be raised only before 1st July, 1949. A dispute whether a property was recognised as private property or not was held to be a dispute arising out of F the terms of Covenant, thereby barring the Courts to adjudicate the same in view of Article 363 of Constitution.

32. Also in ***Madhav Rao Jivaji Rao Scindia*** (supra), this Court while interpreting Article 363 of the Constitution, observed that G ***a dispute relating to the enforcement, interpretation or breach of any treaty etc., is barred from the Courts' jurisdiction. The bar comes into play only when the dispute is arising out of the provisions of a treaty, Covenant etc.,*** as in the present case. This Court held that Article 363 has two parts. The first part relates to disputes H

arising out of Agreements and Covenants etc. The jurisdiction of this Court as well as of other Courts is clearly barred in respect of disputes falling within that part. Then comes the second part of Article 363 which refers to disputes in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any agreement, Covenant etc. It was specifically mentioned that right as mentioned in Article 363 signifies property.

33. In yet another case, ***Karan Singh (Dr.) vs. State of J&K,*** (2004) 5 SCC 698, while examining the applicability of Article 363 of the Constitution to the disputes arising out of a treaty, Covenant etc., this Court observed that all Courts including the Supreme Court is barred to determine any right arising out of a Covenant. ***The correspondence exchanged between the*** **Ruler** ***and the Government would amount to agreement within the meaning of Article 363.***

34. In view of our above discussion and as settled by this Court in the above judgments, Covenant was an act of State and any dispute arising out of its terms cannot form the subject matter in any Court including the Supreme Court, and there cannot be any implied recognition of the property as private property at any later stages when an opportunity had already been granted to raise issue in terms of clause 3 of Article 12 before defined period; above all, the properties do not find place in the Covenant. The plaintiff is trying to interpret the Covenant that all properties which are in the custody of the Household Department are the personal properties of the Ruler. We feel that such interpretation and implied recognition is impermissible as held by this Court in ***Draupadi Devi.*** Hence the Court below erred in entertaining the Suit without properly taking into consideration the judgments and the proposition of law laid down by this Court in catena of cases. Hence we are of the view that the relief in the Suit falls within the ambit of

A Article 363 of the Constitution of India and the Suit is not maintainable. Accordingly first issue is answered in favour of the appellant/State and against respondent/plaintiff.

35. Once we have given our finding on the B maintainability of the Suit, we need not to go into the other issues. But in view of the alternative argument advanced by the counsel, we are of the view that we should throw some light on those issues. It is the finding of the Trial Court that the lands were retransferred to the Holkar State in the year 1951, C and re-transferring is without any authority and it is bad. The Trial Court held that though it is the specific case of the plaintiff that they are paying Tauzi, there is no evidence to show that they have paid Tauzi prior to 1951 and the correspondence of the plaintiff and her father shows that the Suit scheduled D properties were not included in item no 14 of the list of properties and further held that Suit scheduled properties were allotted to the Forest Department. First coming to the issue of transfer of land to Forest Department, it is settled law that parties are governed by their pleadings and the burden lies E on the person who pleads to prove and further plaintiff has to succeed basing on the strengths of his case and cannot depend upon the weakness of the defendant's case. The State having alleged several things, has failed to mark any document to show that the properties were transferred to the Forest F Department and the retransfer in the year 1951 was without any authority of law. Though the State has filed certain documents before us, but as they are not part of the evidence, we are not inclined to look at those documents.

G **36.** The appellant State as defendant in the Suit has marked two documents. While remanding the appeals preferred by the defendant and the plaintiff, the appellate Court gave a categorical finding that the Trial Court should not permit any of the parties to adduce further evidence. The remand order H

of the appellate Court was not questioned by the State. After the remand, the Suit was dismissed by the Trial Court wherein a finding was recorded that no evidence is produced before the Court to show that the property was transferred to the Forest Department. This finding has become final as no cross appeal is preferred by the appellant/State. Hence we are not inclined to look into these documents.

37. The plaintiff by marking the voluminous documentary evidence and by examining PW 5 and PW 7 established that they were in continuous possession of property till 1960, except for a short period when the Suit scheduled properties were given to the Army Department. Tauzi was also paid by Maharaja and later by the plaintiff. The finding of the Trial Court in this regard that the plaintiff has failed to adduce any evidence to show that Tauzi was paid prior to 1951, is contrary to the material on record. In spite of all these factors that the Maharaja and the plaintiff were in continuous possession of property and paid Tauzi for the properties, however long the plaintiff's possession may be and paying of the taxes will not give her any right seeking declaration of ownership when these properties are part of a Covenant and calls for an interpretation of the Covenant. In addition to this, the plaintiff wrote a letter to the Additional Chief Secretary, Government General, Administrative Department, Bhopal, dated 1st October 1962, wherein she requested for a declaration of the Suit scheduled properties as the private properties as declared by the Maharaja of Holkar which clearly shows that the whole cause of action and the reliefs sought for in the Suit are based on the Covenant and the rights flown from the Covenant.

38. We are not inclined to go into the discussion whether the re-transfer of land is without authority or not, whether these properties are under the control of Household Department as it amounts to deciding the dispute arising out

of the Covenant, which is barred under Article 363 of the Constitution of India. Even assuming for a minute that these properties are under the control of the Household Department, still the plaintiff cannot succeed for the reason that Maharaja of Holkar in the list of properties furnished has failed to mention these properties specifically, and interpretation of Covenant is not permissible as per settled law.

39. The other finding which we are not able to accept is that the Maharaja is the owner as well as the tenant of the property. All the rights whichever pleaded by the plaintiff are the rights flown only from the Covenant. As provided under clause 12(1) of Covenant, admittedly by the letter dated 29-9-1962 the respondent/plaintiff claimed the title by way of Covenant and not by any such tenancy rights. Hence, the respondent plaintiff cannot claim any right of tenancy over the Suit schedule properties and such plea is misconceived and she is estopped from raising such a plea.

40. Now we would like to deal with the other issue i.e., applicability of Section 158(2) of the Madhya Pradesh Land Revenue Code, 1959. The said Section came into force with retrospective effect from October 2, 1959 and reads thus:

> 158(2): A Ruler of an Indian State forming part of the State of Madhya Pradesh who at the time of coming into force of this Code, was holding land or was entitled to hold land as such Ruler by virtue of the Covenant or agreement entered into by him before the commencement of the Constitution, shall, as from the date of coming into force of this Code, be a *Bhumiswami* of such land under the Code and shall be subject to all the rights and liabilities conferred and imposed upon a *Bhumiswami* by or under this Code.

As per Section 158(2) in order to confer the rights of

Bhumiswami a Ruler should be holding land or he should have been entitled to hold land as such Ruler by virtue of a Covenant or agreement entered into by him. The plaintiff/respondent cannot seek the status of *Bhumiswami* independent of the Covenant because the rights under Section 158(2) arise out of the Covenant itself. The source to hold the land arises by virtue of a Covenant. When the right so claimed by way of Covenant is disputed and the relief of settling these disputes is barred under Article 363 of the Constitution, in our considered view, one cannot claim to be "*Bhumiswami*" under Section 158(2) of the Madhya Pradesh Land Revenue Code, independent of the Covenant. Accordingly, this issue is held in favour of appellant/State and against the respondent/plaintiff. Hence we are of the considered opinion that the Suit filed by the plaintiff for declaration and injunction is barred under Article 363 of the Constitution of India and the plaintiff is not entitled for any relief under Section 158(2) of the Madhya Pradesh Land Revenue Code claiming the rights of *Bhumiswami*.

41. For all the foregoing reasons, we allow these appeals by setting aside the impugned judgments of the High Court and consequently the Suit is dismissed. However, there shall be no order as to costs.

Kalpana K. Tripathy Appeals allowed.