

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order reserved on: 13.2.2018****Order delivered on: 23.3.2018****Writ Petition (C) No.7166 of 2008**

1. Shivendra Kishore Das S/o Late Radha Sarveshwar, Aged about 50 years, R/o. Gopal Bhawan, Near Rani Mandir, Chhuikhadan, District Rajnandgaon (CG)
2. Jitendra Kishore Das S/o. Late Radha Sarveshwar, aged about 44 years, R/o. Gopal Bhawan, Near Rani Mandir, Chhuikhadan, District Rajnandgaon (CG)
3. Sanjay Kishore S/o Late Radha Sarveshwar, aged about 40 years, R/o. Gopal Bhawan, Near Rani Mandir, Chhuikhadan, District Rajnandgaon (CG)
4. Smt. Pushpa Lata Devi W/o. Late Radha Sarveshwar, aged about 67 years, R/o. Gopal Bhawan, Near Rani Mandir, Chhuikhadan, District Rajnandgaon (CG)
5. Babby Rama Das D/o. Late Radha Sarveshwar, aged about 44 years, R/o. Gopal Bhawan, Near Rani Mandir, Chhuikhadan, District Rajnandgaon (CG)
6. Babby Padmini Das D/o. Late Radha Sarveshwar, aged about 42 years, R/o. Gopal Bhawan, Near Rani Mandir, Chhuikhadan, District Rajnandgaon (CG)

---- Petitioners

Vs

1. Union of India, through Ministry of Home Affairs, Government of India, New Delhi
2. State of Chhattisgarh, Through Secretary, Department of Revenue, Mantralaya, D.K.S. Bhawan, Raipur (CG)
3. Commissioner, Raipur Division, Raipur, Distt.-Raipur (CG)
4. Collector, Rajnandgaon, Distt.-Rajnandgaon (CG)
5. Smt. Surabhi Bala Devi @ Vijay Laxmi Devi, Widow of Late Rituparna Kishore Das, Aged about 75 years, R/o Chhuikhadan, Distt. Rajnandgaon (CG)

6. Ghanshyam Kishore Das, son of late Rituparna Kishore Das, aged about 57 years, R/o Chhuikhadan, Distt.-Rajnandgaon (CG)
7. Smt.Mahalaxmi Devi, wife of Ram Chandra Pal, aged about 59 years, P.O. Pal Lahara, Distt.-Angul (Orissa)
8. Smt. Manorama Devi, widow of Late Thalendra Kishroe Das, aged aged about 70 years, R/o. Chhuikhadan, Distt.-Rajnandgaon (CG)
9. Chudamani Kishore Das, Son of Late Thalendra Kishore Das, aged about 54 years, R/o Chhuikhadan, Date Thalendra Kishroe Das, aged aged about 70 years, R/o. Chhuikhadan, Distt.-Rajnandgaon (CG)
10. Kiran Kishore Das, son of Late Thalendra Kishore Das, aged about 52 years, R/o Chhuikhandan, Distt.Rajnandgaon (CG)
11. Narsingh Kishore Das, son of Late Thalendra Kishore Das, aged about 48 years, R/o. Chhuikhadan, District Rajnandgaon (CG)
12. Smt.Jaishree Devi, wife of Shri R.K. Vaishnav, aged about 45 years, R/o. Executive Engineer, Prime Minister Sadak Yojana, Kabirdham (CG)
13. Vikram Kishore Das, son of late Thalendra Kishore Das, aged about 40 years, R/o. Chhuikhadan, Distt. Rajnandgaon (CG)

---- Respondents

For Petitioners	:	Dr.N.K.Shukla, Senior Advocate with Mr.Vikram Sharma, Advocate
For Respondent No.1	:	Mr.B.Gopa Kumar, A.S.G.
For Respondents No.2,3&4	:	Mr.D.R.Minz, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The Indian Independence Act, 1947 provided inter-alia that the Government of India Act, 1935 (hereinafter called as “the Act of

1935”), shall with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India. The Act of 1935 also provided that an Indian State may accede to the Dominion of India by an instrument of Accession executed by the Ruler thereof. Consequently, the Rulers of the Princely States in exercise of their sovereignty over the respective States, executed their Instrument of Accession over a period of time which as accepted by the Governor General of India. The States were also required to execute Standstill Agreements and thereafter Merger Agreements were executed for integrating the administration of the Princely States with the nearby Provinces and ultimately with the Dominion of India and also inter-alia for providing the details of the merger of the princely States with the then Dominion of India. Accordingly, an Instrument of Accession of Chhuikhadan State was executed by Raja of Chhuikhadan in exercise of his sovereignty in and over the said State declaring accession to the then Dominion of India on 21.10.1947 (Annexure R-1/1) and thereafter Merger Agreement was executed by Raja of Chhuikhadan with the Secretary to the Government of India, Ministry of States on 15.12.1947.

2. This writ petition was filed by petitioner-Radha Sarveshwar Kishore Das (died during pendency of the writ petition and his legal representatives were brought on record) stating inter-alia that the land which was belonging to Rajmata Rani Mohan Kunwar Devi was wrongly vested in the State and the

petitioner's property has been acquired by the State without any public interest and without any payment of compensation to him and a writ has been claimed directing the respondents-Union of India and others to return and restore the property belonging to Rajmata Rani Mohan Kunwar Devi.

3. Return has been filed mainly by the Union of India clearly stating that the writ petition as framed and filed relates to Merger Agreement and by virtue of the provisions contained in Article 363 of the Constitution of India, the writ petition is expressly barred, therefore, it deserves to be dismissed with exemplary cost.
4. Dr.N.K.Shukla, learned Senior Counsel along with Mr.Vikram Sharma, learned counsel for the petitioners would submit that though dispute relates to Merger Agreement dated 15.12.1947 and it relates to Articles 3, 4 and 5 of the said agreement which clearly state that intention between two parties to execute agreement was to preserve private property belonging to Raja, Rajmata, Yuvraj, Yuvrani and other family members of erstwhile State of Chhuikhadan, respondents-Union of India and State had not taken any care to ascertain the wishes from Rajmata and the land belonging to Rajmata Rani Mohan Kunwar Devi was wrongly vested in the State without any public interest and without any payment of compensation to her, therefore, an appropriate writ be issued to return and restore the property earlier held and belonging to Rajmata Rani Mohan Kunwar Devi.
5. On the other hand, Mr.B.Gopa Kumar, learned Assistant Solicitor General for Union of India would submit that the dispute relates

to interpretation of Article of the Merger Agreement (Annexure P/1) executed between Rituparna Kishore Das, Raja of Chhuikhadan and Secretary to the Government of India, Ministry of States on 15.12.1947 and therefore, by virtue of the provisions contained in Article 363 of the Constitution of India, the writ petition as framed and filed is expressly barred.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
7. In order to resolve the dispute raised at the Bar, it would be appropriate to notice Article 363 of the Constitution of India which states as under:-

“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 of the Dominion of India or any of its 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.

(2) In this article-

- (a) “Indian State” means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and
- (b) “Ruler” includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the

Dominion of India as the Ruler of any Indian State.”

8. A focused glance of the aforesaid Constitutional provision would show that in case of disputes arising out of any provision with respect to the Merger Agreement, this Court would have no jurisdiction as expressly barred by the above-stated Constitutional provision.
9. The Constitution Bench of the Supreme Court in the matter of **Colonel His Highness Sawai Tej Singhji of Alwar v. Union of India**¹ has clearly held that Article 363 of the Constitution bars the jurisdiction of all courts in any disputes arising out of any agreement which was entered into or executed before the commencement of the Constitution by any ruler of an Indian State to which the Government of India was a party. The operation of the Article is not limited to any “Parent” covenant and every agreement whether it is primary or one entered into in pursuance of the provisions of a preceding agreement, would fall within the ambit of the article.
10. Reverting to the factual score of the present case, undisputedly, the petitioner has raised dispute relating to the provisions contained in Articles 3 and 4 of the Merger Agreement entered into between Raja of Chhuikhadan and Government of India on 15.12.1947 and as such, the provisions contained in Article 363 of the Constitution of India clearly attracts and therefore, the writ petition as framed and filed is barred by the provisions contained in Article 363 of the Constitution of India.

¹ (1979) 1 SCC 512

11. As a fallout and consequence of the above-stated discussion, the writ petition as framed and filed is dismissed as not maintainable being expressly barred by the Constitutional provision contained in Article 363 of the Constitution of India leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-