

After more than 70 years, the heirs of a beneficiary are entitled to his trust fund (High Commissioner for Pakistan in the United Kingdom v Prince Mukarram Jah, His Exalted Highness The 8th Nizam of Hyderabad and others)

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Dispute Resolution analysis: The dispute raised a wide range of legal issues, including procedural and evidential points, justiciability, conflicts, trusts and restitution, illegality and limitation, all in a fascinating historical context. Written by Fiona Whiteside, barrister at Twenty Essex.

High Commissioner for Pakistan in the United Kingdom v Prince Mukarram Jah, His Exalted Highness The 8th Nizam of Hyderabad and others [\[2019\] EWHC 2551 \(Ch\)](#), [\[2019\] All ER \(D\) 60 \(Oct\)](#)

What are the practical implications of this case?

For the majority of civil practitioners, the most interesting part of the judgment will be the careful manner in which the judge explains his analysis of the evidence. At a time when the Business and Property Court is considering reform of factual witness evidence, Marcus Smith J's treatment of witness statements prepared more than 50 years ago for proceedings in the House of Lords is as detailed as it is scrupulously fair. The bottom line is that documentary evidence and probability are the judge's guide (at paras [60]–[61] and [130]–[146]).

Public International Law (PIL) and conflicts practitioners may be interested in the judge's consideration of whether Hyderabad was a 'legal district' in 1948 and the authority of an absolute monarch (at paras [176]–[198]). And trusts practitioners will doubtless find the judgment a useful authority on the interplay between agency and settlement of an express trust (at paras [246]–[247]), and between constructive (at paras [248]–[251]) and resulting trusts (at paras [252]–[254]).

What was the background?

The origin of the dispute lay in the transfer of around £1m in old money by the then Nizam of Hyderabad to the then High Commissioner of Pakistan in the UK, following the partition of India the year before. The money was transferred from the Nizam's London account with what is now NatWest bank, to the High Commissioner's account at the same bank. Over time, the fund had grown to around £35m and remained held by the bank (at paras [1]–[5], [136]–[146] and section D).

The Nizam's family had previously sought to recover the money, but encountered an obstacle in 1954 when the House of Lords held that their claim was barred by Pakistan's sovereign immunity (*Rahimtoola v Nizam of Hyderabad* [\[1958\] AC 379](#), [\[1957\] 1 All ER 257](#) (at paras [6]–[8] and further background at paras [7]–[11]).

In 2013, Pakistan launched proceedings to claim the fund from NatWest, thereby waiving its sovereign immunity. Pakistan's action triggered rival claims by the two grandsons of the Nizam and by India, although the Nizam's heirs and India had agreed a settlement as between themselves. A subsequent attempt by Pakistan to discontinue the proceedings was rejected as an abuse of process (*High Commissioner for Pakistan in the United Kingdom v National Westminster Bank and Others* [\[2015\] EWHC 55 \(Ch\)](#), [\[2015\] All ER \(D\) 107 \(Jan\)](#)) (at para [12]).

The parties' submissions are at paras [16]–[28] and the historical background is at paras [62]–[85].

What did the court decide?

The only question which fell to be determined was whether Pakistan had a beneficial interest in the fund or was merely a trustee, at paras [13]–[14].

Marcus Smith J rejected Pakistan's case that the original sum paid into the High Commissioner's account had been intended as payment for arms shipments or as an outright gift (at paras [215]–[216] and [258]). No express trust could arise because the Nizam's agent who transferred the fund to the High Commissioner had no authority to do so (at paras [246] and [247(8)–(9)]). In 1948 the High Commissioner (thereafter his successors as High Commissioner) held the fund on constructive—alternatively on resulting—trust in favour of the Nizam (thereafter his successors in title) (at paras [228], [240] and [259]).

The judge also accepted the alternative claims of the Nizam's heirs in restitution (at paras [271] and [290]), rejecting Pakistan's limitation (at paras [276]–[279] and [284]–[285]) and capacity defences (at paras [262]–[265] and [269]).

Finally, the Judge turned to Pakistan's defences of act of state, justiciability and illegality (at paras [294]–[296] and [316]). The judge held that the notion of 'partial' non-justiciability was arguable so long as an issue was entirely severable, standing distinct from all other issues (at para [303]). However, that was not the case here (at paras [305] and [313]). And even if there were illegality in India's invasion of Hyderabad, that would be irrelevant to the present claim (at paras [323] and [339]).

Case details

- Court: High Court, Chancery Division
- Judge: Marcus Smith
- Date of judgment: 02/10/2019

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