

Prem Singh and anr. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-10-1963

Reported in : AIR1964Raj75

Judge : J.S. Ranawat, C.J. and; V.P. Tyagi, J.

Acts : [Constitution of India](#) - Articles 19(1), 31 and 226

Appeal No. : Civil Writ Petn. No. 282 of 1962

Appellant : Prem Singh and anr.

Respondent : State of Rajasthan and ors.

Advocate for Def. : B.C. Chatterji, Deputy Govt. Adv.

Advocate for Pet/Ap. : Hastimal, Adv.

Disposition : Petition allowed

Judgement :

Ranawat, C.J.

1. This is an application under Article 226 of the [Constitution of India](#).

2. The petitioners Prem Singh and Vijai Singh have come to this Court against the State of Rajasthan and three others on the allegations that they held lands

mentioned in the document Ex. 1 and have been cultivating and enjoying the said land even after the resumption of the petitioner's Jagir in the capacity of Khud Kasht holders. It is further alleged that the opposite party No. 4--the Sub-Divisional Officer, Sambhar -- by his order dated the 24th of June, 1960, which is Ex. 1 on the record, restrained the petitioners from cultivating the said lands or from transferring the same. The authority of the Sub-Divisional Officer to make such an order or to interfere in the peaceful enjoyment of the petitioners of the land is questioned, and it is contended that it is not in accordance with law. It is prayed that the opposite parties be restrained from interfering in the enjoyment of the proprietary rights of the petitioners contrary to law. The Sub-Divisional Officer, Sambhar, has filed a reply to the writ petition, and he has disputed the rights of the petitioners in the said lands and he has also questioned the correctness of the entries in the revenue records showing these lands in the Khud Kasht of the petitioners. The order passed by the Sub-Divisional Officer is supported on the assumption that the title or interest of the petitioners in the lands in question does not exist.

3. The Board of Revenue by its judgment dated the 13th of December, 1961, has held that the order of the Sub-Divisional Officer dated the 24th of June, 1960, does not fall under the Rajasthan Land Revenue Act or the Rajasthan Tenancy Act and has treated the same to be an executive or administrative one. In the said order the Sub-Divisional Officer has mentioned that the petitioners had been cultivating the lands and that they had also been selling the same. This shows, the petitioners are in occupation of the lands and the said lands are also entered in the revenue papers in their name. The Sub-Divisional Officer cannot take the law in his own hands so as to oust the petitioners from the lands or to interfere in their peaceful enjoyment without taking recourse to legal proceedings. Administrative orders cannot be taken recourse to in such a manner as to interfere in the fundamental or legal rights of the citizens. The Constitution has provided rule of law and the Government officials are expected to have regard for it. They should not indulge in doing anything contrary to the provisions of law or in disregard thereof. The Sub-Divisional Officer, if he thought that the title of the petitioners or their possession was illegal, should have taken proceedings in accordance with law rather than taking the risk of interfering with the rights of the petitioners in disregard of the

authority of law. The petitioners, who are in possession of the lands have a right to continue in possession and their right and interest can only be terminated or extinguished in accordance with law.

4. The petition is allowed and the opposite parties are restrained from interfering in the peaceful enjoyment of the lands in dispute by the petitioners. In case the opposite parties desire to question the title or other rights of the petitioners in the lands, they are at liberty to proceed in accordance with law.

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