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Court : Rajasthan

Decided On : Dec-02-1952

Reported in : AIR1953Raj202

Judge : Wanchoo, C.J. and; Dave, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107, 144, 144(1) and 145; [Constitution of India](#) - Article 226

Appeal No. : C. Writ Petn. Nos. 159, 164, 165, 167, 169, 176 to 183, 191 and 192 of 1952

Appellant : Bhanwar Singh and ors.

Respondent : S.D.M., Khetri

Advocate for Def. : C.B. Bhargava, Adv. for No. 1 and; R.K. Rastogi, Adv. for Nos. 2 and 3

Advocate for Pet/Ap. : M.M. Tiwari and; C.L. Agrawal, Advs.

Disposition : Applications allowed

Judgement :

Dave, J.

1. These are fifteen applications under Article 226 of the [Constitution of India](#). The questions of law involved in them are common; the facts are also similar : they have been heard on one date, and, therefore they are decided together.

2. In the Sub-division of Khetri, District Jhunjhunu, there are two villages called Chinchdoli and Saffragwar. Twelve of the applications relate to agricultural lands situated in the village Chinchdoli and the remaining three to those situated in the village Saffragwar. On 7-7-1952, Shri Shambhudayal was the Sub-Divisional Magistrate of Khetri while on 14-7-1952 and 17-7-1952 Shri B. C. Mukerjee was the Sub Divisional Magistrate in his place. Twelve Of the present petitions have been filed to challenge the validity of the orders passed by Shri Shambhudayal on 7-7-1952 while the remaining three are directed against the orders of Shri B. C. Mukerjee passed. on the 14th and 17th July, 1952. Shri Shambhudayal is, therefore, opposite party No. 1 in twelve applications while Shri B. C. Mukerjee is opposite party No. 1 in the remaining three applications. Other opposite parties in each case are those persons in whose favour these officers have passed their orders. In applications Nos. 191 and 192, the petitioners are residents of Saffragwar, while in the other they are the residents of the village Chinchdoli. The statement appended at the end (which is not published here, as being unnecessary for the purposes of the report --Ed.> would show the number and date of applications, the names of the petitioners, the names of the opposite parties, the Sub-Divisional Magistrates concerned and the plots of land to which the orders passed by the said Sub Divisional Magistrates relate.

3. The petitioners' allegations are that before 7-7-1952 they were in sole occupation of the plots of land detailed in Column four of the aforesaid statement, that the petitioners and not the opposite parties mentioned in column No. 3 were cultivating them before the said date, that after the result of the last elections to the Rajasthan Legislative Assembly, the present Government and Congress leaders started' encouraging cultivators especially those belonging to the Jat Community, to forcibly take possession and cultivate the lands formerly cultivated by the Rajputs, and to refuse to pay to their landlords the rent of land cultivated by them. Open class war was preached in public meetings, the Jat tenants were openly incited and encouraged to take the land in their own hands, and the officers were

directed to suppress the Rajputs and get the land from their possession. Powers of the State were utilized for terrorising the Rajputs in unsettled areas and particularly at Chinchdoli and Saffragwar.

Before the commencement of rains, some of the petitioners approached the police and the police with a view to prevent a breach of the peace started proceedings against some Rajputs and some Jats under Section 107, Criminal P. C. in the Court of the Sub Divisional Magistrate and those cases were still pending when the Sub-Divisional Magistrate passed the impugned orders. On 2-7-1952, the Education Minister and the Collector Jhunjhunu accompanied by Shri Kumbha Ram and Shri Harlal Singh visited Chinchdoli and Saffragwar villages and at their instance, the Sub-Divisional Magistrate, Khetri passed orders on the 7th, 14th and 17th July, 1952, whereby the opposite parties were declared in possession of the plots which were in fact in the petitioners' occupation.

It is urged in the petitions that the proceedings of the Sub-Divisional Magistrates Khetri did not show as to what kind of jurisdiction they exercised, that is, whether the order was passed by them in the capacity of a Magistrate or in the capacity of a Revenue Officer. It is contended that the proceedings were not taken under any provisions of Criminal P. C., that even as a Re-venue Court, the Sub-Divisional Magistrate had no such jurisdiction under any provision of law in force in Rajasthan. It is further contended that the Magistrate ignored the relevant provisions of Sections 107 and 145, Cr. P. C., that the entire proceedings were taken in violation of the provisions of law, that they started their enquiries without any 'notice, that witnesses were ordered to be produced then and there, that no time was allowed to the petitioners for bringing their witnesses who were residing at a distance or who had gone to other villages, that the right of getting the witnesses summoned through Court was denied that all the witnesses produced by the petitioner were not examined and even the rules of procedure to arrive at natural justice were not adopted. It is further alleged that Military and armed police with rifles, tommy guns and machine guns were posted on all fields of the Rajputs, including the disputed lands, and the petitioners were threatened with death in case they attempted to assert their rights or even showed their presence near about their lands, that the opposite parties were actively helped to cultivate the

disputed lands, and thus the petitioners were deprived of their possession and chief means of their livelihood and maintenance of themselves and their families.

It is pointed out that the petitioners' fundamental rights of property as guaranteed under Articles 19 and 31 of the Constitution have been violated, that the Sub-Divisional Magistrates have exercised jurisdiction which was never vested in them by law, therefore, their orders dated the 7th, 14th and 17th July, 1952 should be quashed by a writ of certiorari. It is also prayed in the petitions that orders directing the opposite parties to return the possession of the land should be issued, but this prayer was not pressed at the time of arguments on the ground that the petitioners would take separate and appropriate proceedings under the law for the restoration of their possession.

4. In the reply filed by the opposite parties against the allegations, it has been admitted that the police had started proceedings against nine Jats of village Chinchdoli on 28-4-1952 with a view to prevent a breach of the peace and that two more complaints under Section 107, Criminal P. C. were submitted to the police thereafter, on 14-6-1952 against six Rajputs and 37 Jats of village Chinchdoli and that these proceedings were still pending before the Sub-Divisional Magistrate. It is also admitted that the Education Minister and the Collector, Jhunjhunu had visited the village Chinchdoli on 2-7-1952 accompanied by Shri Kumbha Ram, but it is denied that the Sub-Divisional Magistrate had passed any orders at their Instance. All the allegations about the highhandedness of the Congress leaders or the military or police or other authorities have been denied. It is stated that after the enactment of the Produce Rent Regulation (Amendment) Act, 1952, by the Rajasthan Legislative Assembly in 1952, by which the rent of the landholders was fixed to 1/6th share of the produce and with the approach of monsoon the law and order situation in the Bhomia villages of Khetri Sub-division, particularly Chinchdoli and Saffragwar had become precarious. Settlement operations were also to start in these villages and there were organised attempts on the part of the landholders to get cultivatory possession of tenants' lands so that they might be recorded as tenants in the settlement papers. The cultivators who were threatened with deprivation of their lands and means of livelihood resisted these attempts and the situation continued to deteriorate. In May, 1952, two Congressmen were murdered

in Bhomia village of Udaipurwati. The relations between the Bhomias and Jats became very bitter and serious disturbances were apprehended. Proceedings under Section 107, Criminal P. C. were, therefore, started against the Bhomias and the cultivators and a platoon of Central Reserve Police had to be posted at Chinchdoli and Saffragwar villages in the month of May 1952 to control the situation in the villages of Chinchdoli, Sunali, Saffragwar and Hardia.

On the 2nd July, 1952 when the District Magistrate, Jhunjhunu, visited the villages, the cultivators complained to him against the attitude of the Bhomias and the police officers who had started proceedings against them under Section 107, Criminal P. C. The District Magistrate, thereupon, instructed the Sub-Divisional Magistrate to ascertain the reality of possession by holding a summary enquiry on the spot. The opposite party No. 1, therefore instituted preliminary summary enquiries for his own satisfaction and with a view to take proceedings under Section 144, Criminal P. C. or other appropriate regular proceedings. It is further stated that the Magistrate Shri Shambhu-dayal was under orders of transfer, that he left the place on 8-7-1952 and no regular proceedings could, therefore, be instituted thereafter. It is urged that the petitioners were not in possession of the lands in dispute, that they were not deprived of their possession, that none of their fundamental rights were violated and that the petitioners' applications for writ are not maintainable.

5. The only question for the determination of this Court in the present proceedings is, whether the orders passed by the Sub-Divisional Magistrate against the petitioners on the 7th, 14th and 17th July, 1952 were issued in exercise of any jurisdiction vested in them by any law and if not whether a writ of certiorari lies for quashing those orders.

6. Learned Government advocate, and Shri R. K. Rastogi appearing for the opposite parties other than the Sub-Divisional Magistrate, have very candidly conceded that the proceedings taken by the Sub-Divisional Magistrate were not covered by Section 107 or Section 145 of the criminal P. C. Learned Government advocate has tried to argue that the Magistrate wanted to take some action under Section 144, Criminal P. C., and it was perhaps with that view that he

conducted the present enquiries.

Section 144, Sub-section 1 runs as follows:

'In cases where, the opinion of a District Magistrate, or of any other Magistrate (not being a Magistrate of the 3rd Class) specially empowered by the Government to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable.

Such Magistrate may, by a written order stating the material facts of the case and served in manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray.'

7. It is clear from the provisions of this section that it is not within the powers of a Magistrate acting under this section to adjudicate upon questions of title or possession and it does not contemplate that a Magistrate should embark upon any enquiry like the present one before passing any order under it. It is admitted by the Sub-Divisional Magistrate himself that proceedings under Section 107, Criminal P. C., were already pending before him and therefore, he could immediately proceed with those cases to prevent the breach of peace if it was likely to occur. Moreover, if there was any imminent danger of a breach of the peace concerning any of the lands in dispute, he could further take proceedings under Section 145, Criminal P. C. It appears from the orders which both the Magistrates have passed on the dates mentioned above that they gave an appearance of an enquiry by asking both the parties to produce their witnesses at the spot and then they passed their orders declaring the opposite parties to be in possession of the lands. In none of the orders which they have passed, they have discussed any evidence produced by the parties. They have simply referred to the witnesses and recorded their conclusions. The specimen of the type of judgments given by the S. D. Os. is given below :

'Copy of the judgment about the well Chamarwala dated 7-7-1952 in the matter of an enquiry about the disputed land situated in village Chinchdoli. Well Chamarwala 50 bighas of land; Landholders Ladu Singh, Mohan Singh etc. Bhomias.'

'After the inspection of the site and considering over the evidence of the parties, I come to the conclusion that 25 bighas of land were cultivated by Mohan Singh Bhomia in the past year while the remaining 25 bighas, -- 14 bighas irrigated and 11 bighas unirrigated were cultivated by Sheokaran Jawana and others. Sd/-S. Dayal, Asstt. Collector, Khetri dated 7-7-1952 Camp Chinchdoli.'

8. Shri B. C. Mukherjee, who was appointed in place of Shri Shambhu Dayal followed in his foot-steps and passed the same type of order one of which runs as follows :

'Copy of judgment : Well Lalsinghwala dated 17-7-1952, in the matter of enquiry about the dispute of land situated at SaSragawar about cultivation.

'The Jats gave proper account of 'dhorey's' etc. This well is situated near their dhani. Witnesses Narayan and Hanuman are reliable.

Cultivatory possession over the land irrigated and unirrigated on this well is recognised as that of Narayan and Hanuman. Sd/- B. C. Mukerjes S. D. O., Khetri, dated 17-7-1952.'

9. In order to show the origin of the enquiry, the petitioners have produced a copy of the order of the Sub-Divisional Magistrate dated 2-7-1952 which is as follows:

'Today the Collector of Jhunjhunu when he came to Chinchdoli with the Hon'ble Education Minister in his tour, passed an order at the complaint of the cultivators that I should conduct a summary enquiry on the spot in the disputes between the Bhomias and the cultivators of this village and that I should get the land cultivated by those whose possession would be proved so that the parties may be saved from the proceedings under Section 145, Criminal P. C. and most of the land may have to be attached under the said section.' Sd/- Sham-bhudayal. S. D. M., Khetri, dated 2nd July '52.'

10. It is abundantly clear from the said proceedings recorded by Shri Shambhudayal S.D.O. that he had begun enquiry not with a view to take any proceedings under Section 144, Criminal P. C. but with a definite view of avoiding any proceedings under Section 145, Criminal P. C. It may be pointed out that this method of avoiding a procedure laid down by law and taking recourse to other method not by law is highly objectionable and cannot be justified. Section 145, Criminal P. C. does provide a procedure to be taken in cases of emergency and the Magistrate had no jurisdiction whatsoever to ignore the provisions of law and resort to lawlessness. If the learned District Magistrate directed him to adopt such a procedure, it was all the more unfortunate. It is high time that the authorities in charge of the District and Sub Division should realise that the [Constitution of India](#) guarantees certain fundamental rights to the citizens of India and they should not violate them by such old-time methods.

11. Learned advocates for the opposite parties have not been able to point out any provisions even on the revenue side by which orders passed by the Sub-Divisional Magistrate can be justified.

12. Learned advocate for opposite parties have next tried to argue in the alternative that when the Sub-Divisional Magistrates had no jurisdiction to pass the impugned orders, it should be deemed that they were passed by persons having no authority and, therefore, no writ should be issued in respect of them. This argument is also untenable because in all the orders which the Magistrates have passed in these cases, they have styled themselves as Sub-Divisional Officers of Khetri which clearly shows that they have passed them in their official capacity of a Sub-Divisional Officer. They have tried to hold an enquiry in the claims of the contending parties and given their decisions thereafter. They have definitely worked as quasi-judicial authorities and the petitioners are most likely to be affected by these decisions if they are not set aside. It is also clear that they have exercised jurisdiction which was not vested in them by any law.

13. The applications are therefore, allowed. Let a writ of certiorari be issued and the orders of the Sub-Divisional Magistrates Shri Shambhudayal and Shri B. C. Mukerjee dated 7th, 14th and 17th July, 1952 be quashed.

