

Asha Ram and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-18-1978

Reported in : 1978WLN(UC)293

Judge : S.C. Agrawal, J.

Appeal No. : S.B.C.W. No. 1350/72

Appellant : Asha Ram and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

S.C. Agrawal, J.

1. Petitioners Nos. 1 to 4 in t bas writ petition claim to be transferees of certain agricultural land measuring 30 Bighas 13 Biswas from petitioners Nos. 5 and 6 under registered sale deed 12-1961. Pooran, the father of the petitioner Nos. 5 and 6 was originally recorded as Khatedar tenant in respect of the said land and after the death of Pooran his rights were inherited by petitioners No. 5 and 6 The said land which is claimed to have been purchased by petitioners Nos. 1 to 4 was acquired for the constructions 12 Ghagger Flood scheme in 1965-66 and in exchange there of Murrabba No. 84/349 (12 Bighas) and Murabba Nos. 84/350 19

Bighas in Chak No. 19 S.P.D. were given to petitioners Nos. 5 and 6 and thereafter petitioners Nos. 1 to 4 obtained possession of the said land and began cultivating the same. Petitioners Nos. 1 to 4 applied for effecting mutation of the aforesaid fields in their names but the by Colonization Commissioner, Rajasthan Canal Project respondent No. 2 herein, declined to do so and in his order dated 18th May 1966, he observed that the field appears to have been purchased by the applicants (Petitioner Nos. 1 to 4) and he directed that if the same had been purchased in contravention of the provisions of the Rajasthan Tenancy Act, proceedings for their dispossession may be taken against them under Section 175 of the Rajasthan Tenancy Act,) 955 Thereafter the Assistant Colonization Commissioner, respondent No. 3 herein, passed an order dated 21st March, 1967 directing the Tehsildar Colonization respondent No. 4 herein to dispossess the petitioners from the land above referred. The validity of the orders of Respondent, No. 2 dated 18th May, 1967 and the order of Respondent No. 3 dated 21st March, 1967 is challenged by the petitioner in this writ petition on the ground that said orders have been passed without the authority of law and that the petitioners could be dispossessed from the land referred to above only in accordance with the procedure laid-down in Section 175 of the Rajasthan Tenancy Act, 1955. It has also been submitted on behalf of the petitioner that there is no illegality in the transfer of their Khatedari rights by petitioners No. 5 & 6 in favour of petitioners No. 1 to 4, in view of the fact that Clause (c) of Section 42 of the Raj. Tenancy Act, which curtailed the right of Khatedar tenant to transfer his rights had been repealed by the retrospective effect by the Rajasthan Tenancy (Second Amendment) Act, 1970.

2. On behalf of the respondents it is claimed that in view of the provisions contained in Section 154 of the Rajasthan Tenancy Act, petitioners No. 5 to 6 did not acquire Khatedari rights in the land in dispute and they could not transfer any rights in favour of petitioners No. 1 to 4 and that petitioners Nos. 1 to 4 had thus not acquired any rights in pursuance of the said transfer.

3. In my view it is not necessary to consider these rival contentions of the parties as regards the title of petitioners Nos. 1 to 4 in the lands in dispute and the writ petition can be disposed of on the short ground that the petitioners can be

dispossessed from the land in their possession only in accordance with the procedure laid down in Section 175 of the Raj. Tenancy Act, 1955, & from the reply filed on behalf of the petitioners it is clear that no proceedings for dispossession were taken under Section 175 of the Rajasthan Tenancy Act, 1955. I do not find any infirmity in the order dated 18th May, 1966 passed by Respondent No. 2 wherein he directed the initiation of proceedings for dispossession of the petitioners under Section 175 of the Rajasthan Tenancy Act, in the event of it being found that the transfer in favour of petitioner Nos. 1 to 4 was in contravention of the provisions of the Rajasthan Tenancy Act. But the same cannot be said about the order dated 21st March, 1967 passed by Respondent No. 3 who, instead of following the directions contained in the order of Respondent Nos. 2, decided to direct Respondent No. 4 to dispossess the petitioners from the lands in their possession. The order of Respondent No. 3 dated 21 March 1967 is clearly illegal and is liable to be quashed.

4. The writ petition is, therefore, allowed and the order dated 21st March, 1967 passed by the Assistant Colonization Commissioner is quashed. It will be open to the authorities to take appropriate proceedings for the dispossession of the petitioners from the lands in their possession in accordance with the law and in these proceeding it will be open to the petitioners to establish their right to remain in possession of the said lands. In the circumstances the parties will bear their own costs.