

(1986) 01 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 407 of 1980 and 8, 9, 193, 204, 229, 241, 242, 296, 298 and 300 of 1981

Bal Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 31, 311

Citation : (1986) 2 WLN 391

Hon'ble Judges : Mohini Kapoor, J;Kishan Mal Lodha, J

Bench : Division Bench

Judgement

Kishan Mal Lodha, J.—These 11 appeals before us arise out of a common order dated September 22, 1980, passed by the learned Single Judge dismissing 37 identical writ petitions.

2. As common questions are involved in these appeals, they were heard together and we consider it convenient to dispose them of by a common judgment.

3. It will be convenient to notice the facts in D.B. Civil Special Appeal No. 204 of 1981 Bal Singh v. State of Rajasthan and Ors. which has arisen out of S.B. Civil Writ Petition No. 278 of 1976 Bal Singh v. State.

4. The petitioner-appellant was employee of the former Ruler of erstwhile State of Jodhpur. By a document Anx. 1 dated 5-1-1964 the Comptroller of House-hold of the former Ruler of Jodhpur State Shri Gaj Singh allowed him to cultivate 50 Bighas of land in Khasra No. 4292 situate in Moja, Bilara which belonged to the Ex-Ruler of Jodhpur, We may reproduce Anx. 1 and it is as under:

HIS HIGHNESS HOUSE HOLD, JODHPUR

Umaid Bhawan Palace, Jodhpur,

Dated 5th January, 1964

Shri Bal Singh s/o Bhom Singh Rajput at present Doedhidhar in H.H. House-hold Department has been admitted as tenant of the agricultural land of H.H. the Maharaja Sahib Bahadur Shri Gaj Singhji in Moja Bilara, Tehsil Bilara, District Jodhpur and allowed to cultivate 50 Bighas land in Khasra No. 4292.

Sd/- Manoharsingh

COMPTROLLER OF HOUSE HOLD JODHPUR.

5. By this document Annx. 1 the petitioner was allowed to cultivate 50 Bighas agricultural land as according to him he was admitted as tenant of that land. It appears that on December 27, 1969 or there about the Comptroller of House-hold of the Ex-Maharaja of Jodhpur passed order by which the agricultural land in question was granted to him in token of his long and loyal services to His Highness Jodhpur. The original orders have not been produced along with the writ petition except a copy of such order was filed in S.B. Civil Writ Petition No. 917 of 1966 Shaitan Singh v. State of Rajasthan. In 1972, the petitioner-appellant Bal Singh applied for mutation of his name in the Revenue record. The basis on which the mutation was claimed was the grant made by the Ex-Ruler of Jodhpur in his favour on December 27, 1959. At the time of making this application the land in question was entered in the revenue record as the personal property of the former Ruler of Jodhpur Shri Gaj Singh. He was entered as Khatedar tenant of that land. In the mid of the year 1972 an order was made by the Tehsildar, Bilara by which it was mutated and was entered in the same of the petitioner-appellant. The basis on which the mutation was ordered by the Tehsildar, Bilara, was the grant made on December 27, 1969. After mutation the name of the petitioner-appellant was entered in the Jamabandi (Khewat Khatauni) in respect of Samvat Year 2029-2034. Thereafter the petitioner-appellant started paying land revenue for the years 1972, 1973 and 1974 and rent was paid in 1972 for earlier three years from Samvat Year 2026. The Collector, Jodhpur, issued an order dated December 9, 1976 u/s 9A of the Rajasthan Land Reforms and Acquisition of Land Owners' Estates Act, 1963 (for short "the Act" here in after) making him to deliver possession of the land in his possession to the Sub-Divisional Officer, Jodhpur, as no transfer of an estate liable to acquisition under the Act as amended by the Rajasthan Land Reforms and Acquisition of Land Owners' Estates (Amendment) Act, 1975 ("the Amending Act") or part thereof) made by the land owner after the date of commencement of the Act, i.e. April 13, 1964, could be recognised and such transfer would be null and void and further that the land shall be deemed to continue to vest in the land owner. A reply was submitted to the notice by the petitioner-appellant stating that he was admitted as tenant to the land in question by the former Ruler on January 5, 1964 and he has been in peaceful enjoyment of the land in dispute since then. Reliance was also placed on the grant alleged to have been made in favour of the petitioner-appellant by order dated December 27, 1969 or thereabout and the mutation entries made in his favour in 1972 in pursuance of the grant. It was submitted on his behalf that he

had paid revenue to the State since Samvat Year 2025 and his name was also recorded in the Khasra Record of Samvat Year 2029. The sum and substance of the reply given by the petitioner-appellant was that he was a Khatedar tenant of the land in dispute and in these circumstances, the question of surrendering possession of such land to the State Government did not arise. On April 3, 1972, the petitioner-appellant claimed himself to be the faithful servant of His Highness the Maharaja of Jodhpur and intimated the Collector, Jodhpur, that some Sands were allotted to him by the Ex-Ruler of Jodhpur free of cost in Bilara Tehsil for his cultivation in consideration of the long and meritorious services rendered by him to the Ex-Ruler and that mutation of the land which was in his possession may be sanctioned in his favour. Two lists were also enclosed-(1) list consisting of 45 persons pertaining to lands situated in Bilara; and (2) list of 7 persons to whom land was allotted in Tehsil Bilara.

6. After the Act has come into force some of the land owners including the former Ruler of Jodhpur, challenged the validity of the provisions of the Act by filing separate writ petitions in this Court. These writ petitions were disposed of by a common order dated December 16, 1969. It was held that Chapter IV and VI of the Act and the Schedule annexed thereto were ultra-vires Articles 14 and 31 of the Constitution. The consequence of this was that the entire Act became unworkable. This led to the amendment of the Act by Amending Act No. 15 of 1975 retrospectively. In the case of the former Ruler of Jodhpur Shri Gaj Singh, D.B. Civil Special Appeal No. 13/1970 came up for hearing after the Amending Act No. 15 of 1975 had come into force. The Division Bench of this Court by its order dated April 16, 1980 held that by the amending Act No. 15 of 1975, Chapter IV and VI and the Schedule of the Act were substituted retrospectively by new provisions. The Amending Act was included in the Ninth Schedule to the Constitution of India by virtue of 40th Constitution Amendment Act and so no challenge to the validity of the provisions of the Act could be made. The appeals filed by the State were allowed and the appeal preferred by Shri Gaj Singh (D.B. Civil Special Appeal No. 69/1970 was dismissed. After the Amending Act No. 13 of 1973 had come into force, the Collector issued a notice to Shri Gaj Singh, Ex-Ruler of Jodhpur. This was done on April 15, 1975. By that notice it was directed to him to hand over possession of all records in his possession to the Sub-Divisional Officer, Jodhpur, to which reply was sent on April 25, 1975, on his behalf that the relevant record has already been sent to the Sub-Divisional Officer on November 16, 1964. A subsequent letter by way of clarification was sent on May 3/4, 1975 by the Collector, Jodhpur, to Shri Gaj Singh in which it was mentioned that the documents relating to the land which stood acquired by the State in pursuance of the provisions of the Act as amended by Act. Section 15 of 1975 and which fell within the discretion given in Section 9(1) of the Amending Act should be handed over by him to the authorised officer. The objections so filed were rejected by the Collector, Jodhpur, vide order dated November 29, 1975. The order, however, included the rejection of the objections regarding the alleged transfers said to have been made by the Ex-Ruler in favour

of the petitioners-appellants in village Bilara and Bijasani Jor. The Collector while rejecting the objections dated November 29, 1975 held as under:

TEHSIL BILARA:

Bilara and Bijasani Jor.

All the transfers were made after the date of vesting i.e. 1-9-1964. As per revenue record none of the transferee was in possession before this date and hence all the transfers are invalid. This land stands acquired to the State Government. Their possession has also not been shown in the record submitted by the land-holder.

7. Thus, the Collector, Jodhpur, rejected the objections of the Ex-Ruler regarding transfer of the land in dispute to the petitioner and directed the Sub-Divisional Officer, Jodhpur to take possession of the said land from the petitioner-appellant. It was in pursuance of the order dated November 27, 1975 that again a notice u/s 9A of the Act was issued to the petitioner-appellant as stated above on December 9, 1975. A perusal of that notice shows that the petitioner was called upon by him to hand over possession of the land which is with him within ten days of the receipt of such notice and (hereafter proceedings for allotting the land were taken. Under these circumstances the petitioner-respondent filed the writ petition on February 18, 1976 for quashing of the order dated December 31, 1975 and that a direction may be issued to the Collector restraining him from dispossessing the petitioner from the land in question.

8. The writ petition was opposed by the appellants by filing a reply and documents marked Anx. R/1 to R/6.

9. The facts in the other appeals which arise out of 10 writ petitions by the different petitioner-appellants are the same and it is not necessary to recall them.

10. The learned Single Judge after examining the material on record as well as the submissions that were made before him, dismissed the writ petition and came to the following conclusion:

(1) that the proceedings taken for the recovery of possession of the disputed lands from the petitioner-appellants was not in disregard of the principles of natural justice, for according to him there was no infirmity in the procedure accepted by the respondents for dispossessing the petitioners.

(2) that the petitioners have not been able to show that they were admitted as tenant as such on January 5, 1954 or on any other date prior to the date of the commencement of the Act, i.e. April 15, 1954 or even prior to the date of vesting i.e. September 1, 1964. The document Anx. 1, inter-alia, stated that the petitioner was in possession of the agricultural land but he could not automatically become tenant unless the essential conditions required for the tenancy are satisfied.

(3) that there is nothing on the record between 1964 and 1969 to show that the

possession was ever delivered to the petitioner in pursuance of the document Anx. 1 and that the petitioners ever cultivated the lands in dispute from that time, and further that mere execution of the document Anx. 1 did not confer any right on the petitioner unless they actually started to cultivate the lands as tenants thereof.

(4) that it cannot be denied that the grants made in favour of the petitioners were made by the Comptroller of house-hold on behalf of the former Ruler of Jodhpur. The grants made in December, 1969 merely recited that the possession of the land in question was delivered to the concerned petitioners. The grants did not support the case of the petitioners and that as the petitioners have not succeeded in establishing any right even prima-facie in their favour the proceedings u/s 9A of the Act cannot be nullified merely on the ground of breach or violation of the principles of natural justice, when a consideration of the entire material desired to be produced by the petitioners does not appear to help them on the question of creation of khatedari rights u/s 6(1) of the Act.

11. In support of these appeals Mr. J.L. Daga, learned Counsel appearing for the appellants contended that the petitioner-appellant are khatedari tenants by virtue of the document Anx. 1 dated January 5, 1964 by which they were admitted as tenants of the agricultural lands specified in the respective documents and as the notices have been issued on December 9, 1975, calling upon them to hand over possession of the lands in their possession within ten days of the receipt of such notices, the notices are in utter disregard of the principles of natural justice, for, enquiry into the matter was necessary to be held to enable the petitioner-appellants to establish their claim as khatedari tenants on the lands in dispute. It was also submitted that the mutation had already been effected by the order of the Tehsildar, Bilara, and this means that the transfers made by Ex-Ruler of Jodhpur, in their favour have been recognised by the State Government and the rights had accrued to them on account of the provisions contained in Section 6(1) of the Act. In this view of the matter, contended the learned Counsel for the appellants that the Collector had no right or jurisdiction to take the possession of the lands from the petitioners and thereby nullify the orders of mutations made in their favour in the year 1972.

12. Dr. S.S. Bhandawat, learned Additional Government Advocate, supported the order of the learned Single Judge on the basis of the reasons given by him.

13. The first and the foremost question that, therefore, arises for our determination in these appeals is whether the principles of natural justice have been violated in as much as no opportunity of hearing or for that matter any notice was given to them to establish the possession over the disputed land since 1964. The documents in all the cases of the petitioner-appellants are almost couched in identical language and the learned Counsel for the appellants has laid considerable emphasis on the words "admitted as tenant of the agricultural lands." The learned Single Judge has addressed himself to the question whether these words confer any right of tenancy on the petitioners-appellants. In the

document Anx. 1 there is no mention what so ever of any consideration for the contract of tenancy. It will be relevant here to refer to Section 105 of the Transfer of Property Act which defines lease. According to that a lease of immovable property in transfer of a right to enjoy such property in consideration of money a share of crops, service or any other thing of value to be rendered periodically or otherwise to the transferer by the transferee.

14. One of the essential pre-requisites for the tenancy is that there must be transfer of right to enjoy such property and that should be with some consideration which is called rent and that rent may be payable in cash or kind. The Rajasthan Tenancy Act of 1955 had come into force from October 15, 1955, prior to the document Anx. 1. Section 5(43) of the Rajasthan Tenancy Act, 1958 defines "tenant" as under:

Section 5(43)--"tenant" shall mean the person by whom rent is, or a but for contract, express or implied would be payable and, except when the contrary intention appears, shall include--

- (a) In the Abu area, a permanent tenant or a protected tenat (x x x);
- (b) in the Ajmer area, an ex-proprietary tenant or an occupancy tenant or a hereditary tenant or a non-occupancy tenant or a Bhooswami or a Kathedar;
- (c) in the Rural area, an ex-proprietary tenant or a pukka tenant or an ordinary tenant;
- (d) a co-tenant;
- (e) a grove-holder;
- (f) a village servant;
- (ff) a tenant holding from a land owner;
- (g) a tenant of Khudkasht;
- (h) a mortgagee's of tenancy rights, and
- (i) a sub-tenant;

but shall not include a grantee at a favourable rate of rent or an ijareder or a thekedar or a trespasser.

15. The learned Single Judge took notice of the fact that in the document Anx. 1 there is no recital of any consideration what so ever. The document Anx. 1, in our opinion, is not sufficient to hold that the petitioner-appellants were admitted as tenants prior to the coming into force of the Act. It was held in Associated Hotels of India v. R.N. Kapoor AIR 1959 SC 1962 that if in a particular document a person is described as a tenant or a licensee that by itself is not decisive of the matter whether a document creates a lease or a licence and that has to be determined from the substance of the agreement between the parties and not

from the form thereof. In such a case the intention of the parties plays an important role. In *A.S. Mikav v. New Delhi Municipality* AIR 1962 SC 534 on the question as to whether the relationship of landlord and tenant can be inferred, their Lordships opined that for the purpose of creating relationship of landlord and tenant there should be transfer of interest of immovable property and rent should be used in the legal sense of recompense paid by it. Similar view was taken in *Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others*, . The document. Anx. 1 in our view and as paid rightly by the learned Single Judge, does not establish the tenancy between the petitioner-appellant and the former Ex-Ruler of Jodhpur because there is no clear intention of transfer of right to enjoy the immovable property coupled with an agreement for payment of rent in the sense of a recompense of consideration. The matter can be viewed from another point of view also, namely, whether after the execution of the document Anx. 1 by which the petitioners-appellants were admitted as tenants, they were put in possession and cultivated the lands in question in 1964 or before the date of vesting. The stand taken by the petitioners is negated by their own case which was set up by them. The petitioners-appellants described themselves in 1972 as faithful servants of the former Ruler in respect of these very lands which are covered by the document Anx. 1 and that after a lapse of about 6 years in 1978, they state that these lands were granted free of cost to them by the former Ruler of Jodhpur. Had there been any intention of creation of relationship of landlord and tenant between the petitioners-appellants and the Ex-Ruler of Jodhpur, there would have been no occasion for them to describe themselves as faithful servants of the Ex-Ruler of Jodhpur to whom lands were granted free of cost. Further, the fact that it was by order dated December 27, 1969 on which reliance was placed by the petitioners-appellants that they were allowed to cultivate the lands merely in the capacity of servants of the Ex-Ruler. The Seamed Single Judge asked the learned Counsel, appearing for the petitioner appellants to show from the record whether after the document Anx. 1 the petitioner-appellants were put into actual possession or not. Before the learned Single Judge the petitioners-appellants could not succeed in showing that. It was also repeated by us to the learned Counsel appearing for the appellant, and he rightly stated that there is nothing on the record between 1964 to 1969 to show that possession was ever delivered to the petitioners in pursuance of the document Anx. 1 or that the petitioners-appellants has ever cultivated the lands in dispute between 1964 and 1969. It is relevant also to mention that Khasra Girdawaries of years 1964 65 pertaining to the lands in dispute were produced by the State on being asked by the Court. In those Khasra Girdawaries which were produced before the learned Single Judge Shri Gaj Singh, Ex-Ruler of Jodhpur has been shown as a Khatedar tenant and there is no mention of the lands in question of any of the petitioner-appellants. The reason is this that even after the document Anx. 1 in the capacity of tenants the petitioners-appellants had not actually cultivated the lands and therefore, the learned Single Judge was right in holding that on the basis of the document Anx 1 status of khatedar tenant as contemplated under the Rajasthan Tenancy Act, 1955 could not be inferred. No

advantage what so ever can also be taken by the petitioners-appellants of the alleged grants which are said to have been made in December, 1969 for the reason that the lands in question were given to them on lease in January, 1964 and they have been cultivating the said lands since 1964. The learned Single Judge took notice of the fact that though the documents are said to have been executed in favour of the petitioner-appellants on January 5, 1964, still as late as in the year 1972 the petitioners applied for the mutation of the lands in question. No satisfactory explanation was put forward on behalf of the petitioners before the learned Single Judge for this. The documents which sought to have been produced by the petitioners have not been produced, the documents on which reliance was placed by the petitioners were not believed by the learned Single Judge on the ground that, if they were in existence and were available with the Ex-Ruler there was no reason as to why they have not been produced and handed over to the Sub-Divisional Officer in pursuance of the directions of the Collector.

16. The conclusion of the discussion made so far is that the petitioner appellants had failed to establish that they were khatedar tenants since January 5, 1964. Here, we may notice that after the judgment of this Court declaring Chapters IV and VI to be invalid, by Amending Act. No. 15 of 1975 provisions contained in Chapter IV and VI were re-introduced with retrospective effect. Section 7A which had come into force by Act No. 15 of 1975 reads as follows:

7A. Non-recognition of certain transfers and agreements,--

Not with standing anything contained in any law or judgment, decree or order of a court to the contrary,--

(i) no transfer of an estate liable to acquisition under this Act or part thereof made by the land owner on or after the date of commencement of this or and before the date of vesting, whether by way of sale, mortgage, gift, exchange, lease, assignment, surrender, bequest, creation of trust or otherwise shall be recognised for any purpose of this Act and the estate or part so transferred shall be deemed to continue to vest in the land owners;

(ii) all transfers of an estate liable to acquisition under this Act or part thereof the nature referred to in Clause (i) made by the landowner on or after the date of vesting shall be null and void; and

(iii) any agreement made by a land owner with any other person on or after the commencement of this Act for transfers of his estate liable to acquisition under this Act or part thereof or for relieving, whether in whole or in part, a tenant from liability for payment of rent of any land comprised in his estate shall be and is hereby declared to be null and void.

17. According to that no transfer of estate or part thereof which is liable to acquisition under the Act has been made by the land owner on or after the date of commencement of the Act by way of sale, mortgage, gift, exchange, lease,

assignment, surrender, bequest, creation of trust or otherwise shall be recognised for any purposes of the Act and the State Government could ignore such transfer and as a result of that the estate or part thereof is deemed to continue to vest, in the land owner. The transfers have been declared null and void. A notification was issued u/s 7 of the Act as amended Act No. 15 of 1975 by which September 1, 1964 was declared as the date of vesting. Section 8 of the Act is as follows:

Section 8. Consequence of acquisition.--(1) As from the date of vesting Of any estate,--

(a) (sic) he right title and interest of the land owner and of every other (sic) person claiming through him in his estate, shall stand acquired by (sic) vested in the Government from all encumbrances and shall be utilised by it for the purpose of carrying out agrarain reform in accordance with the provisions of this Act;

(b) all rights, titles, and interests created in or over estate by the land owner or his predecessor-in-interest shall, as against the Government, cease and determine;

(c) all rents and cesses in respect of any holdings (including any land leased by or on behalf of the landowner for any purposes other than agriculture) in the estate for any period after the date of vesting which, but for such vesting would have been payable to the land owner, shall be payable to the Government;

18. All rights or interests possessed by the land owner and of every other person stood acquired by and from the date of vesting. It has also been provided that all rights, titles and interests created in or over estate by the landowner or his predecessor-in-interest shall cease and determined as against the Government.

19. A reading of Sections 7 and 8 of the Act as amended by Act No. 15 of 1975 abundantly makes it clear that after the notified date i.e. September 1, 1964, which is the date of vesting, the Ex-Ruler of Jodhpur could not create any right or interest or make any transfer in any form what so ever, it follows, therefore, that the grants which are alleged to have been made in December, 1969 could not confer any right what so ever on the petitioners, for, they were after the notified date i.e. September 1, 1964. The learned Single Judge has examined the case of the petitioners from various angles and on a proper consideration come to the conclusion that no right of tenancy was created in favour of the petitioners an February 5, 1954, the date of execution of the document Anx. 1 as for that matter in December, 1969.

20. Further question that arises is whether it was incumbent on the respondents to have afforded an opportunity of hearing before issuing notice on December 9, 1975 and when they have failed to do so, whether directions should be given to the Collector to afford an opportunity of hearing to them. As stated here in above the objections were filed regarding acquisition of these very lands by the Ex-Ruler of Jodhpur. These objections were considered and rejected by the Collector

as is borne out from the order dated November 29, 1975. The petitioner-appellants have based their claim on the basis of the right of the Ex-Ruler of Jodhpur who has granted leases to them in the first instance by means of the document Anx. 1 dated January 5, 1964 and subsequent to that in December, 1969, by way of grant. This is to be examined keeping in view the fact that the petitioners-appellants have not succeeded in establishing any right in their favour. In *Ramnath Verma v. State of Rajasthan* AIR 1967 SC 503 an objection regarding absence of opportunity to lead evidence was raised. It was put to the appellants to specify as to what objection they wanted to raise or what evidence they wanted to lead. They were unable to indicate the nature of evidence they desire to produce and their Lordships were pleased to reject the contention that there was breach of the principles of natural justice or that an opportunity to prove their case was not afforded to the appellants or that proper enquiry was made. It will be useful to excerpt the following from the report:

But it does not seem to have been suggested environment apt stage except is one case that the appellants had desired (sic) evidence before the legal remembrancer and he had shut them but. Nor was it shown at the stage what evidence the appellants could produce in support of their objections if an opportunity had been; given to them. Lastly, even in this Court the appellants have not indicated what evidence they could produce in support of the objections raised by them. It seem to us, therefore, that the appellants never really desired to produce any evidence in order to establish that the schemes as a whole should be rejected and that they put forward the contention that they would have produced evidence if given an opportunity to so do, merely taking advantage of the decision of this Court in *Malik Ram*'s case.

21. Reference was made there in to *Malik Ram Vs. State of Rajasthan*, . In connection with Article 311 of the Constitution, the question of observance of the principles of natural justice arose in *Shahoodul Haque Vs. The Registrar, Co-operative Societies, Bihar and Another*, . That was a matter of a Government employee. In para 4 of the report, the following illuminating observations were made by Beg, J. as he then was:

In any case, on the facts before us, we think, that it will be useless to afford any further opportunity to the appellant to show cause why he should not be removed from service. The undenied and undeniable fact that the appellant had actually abandoned his post of duty for an exceedingly long period, without sufficient grounds for his absence, is so glaring that giving him further opportunity to disprove what he practically admits could serve no useful purpose. It could not benefit him or make any difference to the order which could be and has been passed against him. It would only prolong his agony.

22. The principle laid down in the case is that on the facts of that case it would have been useless to show cause and that the same would not have been benefitted nor it would make any difference to the order which had been packed against the appellant. Reference is necessitated to the *Rev. Stainislaus Vs. State*

of Madhya Pradesh and Others, . While explaining the meaning and scope of natural justice, Krishna Iyer, J. has expressed himself in the following words:

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision-maker to the man processed against, the form, features and the fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of such situation, the branch of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exaggeration. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter.

23. The objects of affording an opportunity of hearing pre-dominantly is serve the interest of justice and not that it is to be given for imperative. To quote the learned Judge in this respect:

If in the advancement of justice it is necessary to give such an opportunity, then the Court would not refuse to afford the petitioners such an opportunity. But for the reasons indicated above, I am of the opinion that no useful purpose would have been served if an opportunity would have been afforded to the petitioners to show that the lands in dispute did not belong to the Ex-Ruler of Jodhpur and khatedari rights had accrued to them.

(Emphasis added)

24. We have already held in agreement with the learned Single Judge that the petitioner-appellants have not succeeded in establishing any right even prima-facie in their favour and so recourse was rightly taken u/s 9A of the Act and there is no justification what so ever for the contention that the proceedings initiated and taken u/s 9A of the Act stand vitiated for the reason that the basic principles of natural justice have not been observed. On a careful consideration of the material evidence on record which has been produced by the petitioners-appellants we are of opinion that no useful purpose can be served in the petitioners, if an opportunity of hearing could have been accorded to them, for, on that material it is difficult to infer that any tenancy rights were created by the Ex-Ruler of Jodhpur in favour of the petitioners-appellants prior to the date of vesting.

25. Learned Counsel, appearing for the appellants has invited our attention to Smt. Mahendra Kumari v. State of Rajasthan and Ors SB. Civil Writ Petition No. 1375/1975 decided on January 5, 1985 and two other identical cases in which the learned Single Judge while allowing the writ petitions held that the Collector and the Sub-Divisional Officer concerned should decide such objections as the petitioners may file before them within the period allowed and take over possession of the lands in dispute. The aforesaid decision was rendered in all together different facts & circumstances. it may be pointed out that in the three cases the petitioners had not based their claim on any transfer made by the

former Ruler of Jodhpur after April 13, 1964 but the case set up by them was that they were in cultivatory possession of the lands in dispute from a date prior to April 13, 1964 as tenants of the former Ruler Shri Gaj Singh in Jodhpur and, as such they submitted that they had acquired khatedari rights u/s 5 of the Act as from the date of the commencement of the Act and that they were already in possession of the lands in dispute as tenants thereof. We have already held that the document Anx. 1 relied on by the petitioners is not sufficient to confer the status of tenant within the meaning of Section 5(43) of the Rajasthan Tenancy Act, 1955 and that no benefit can be derived by them on the basis of the grant made in September 1969. The decision in Smt. Mahendra Kumar's case (supra) and two other identical cases is of no assistance what so ever to the learned Counsel for the appellants.

26. learned Counsel for the appellants on the basis of Rule 16 of the Rajasthan Land Reforms and Acquisition of Landowners' Estates Rules, 1964, contended that the petitioners in the cases before us are entitled to allotted land as landless persons and, therefore, the notice issued by the Collector for surrendering the possession are not only illegal but without jurisdiction. Rule 16 of the aforesaid Rules deals with utilisation of acquired estates. It was substituted by notification dated May 1, 1975 published in the Rajasthan Gazette Extraordinary dated May 1, 1975. Before the learned Single Judge the contention on the basis of Rule 16 was not raised. However, at the insistence of the learned Counsel for the appellants we have considered Rule 16 and after that, it was put to the learned Counsel as to how it can be availed of by the petitioner-appellants ? What he could at the most point out was that under Sub-rule (2) of Rule 16 of the aforesaid Rules, the land remaining after reservation mentioned in Sub-rule (1) could be allotted to the landless persons, agriculturists and agricultural labourers belonging to the scheduled castes and the scheduled tribes and the remaining land should be allotted to the other landlord persons, agriculturists and agricultural labourers according to order of priority specified in Sub-rule (1). The basic facts for the applicability of Sub-rule (2), even if, it is applicable to the case of the petitioners are conspicuously absent, as there is no material to hold that the petitioners are landless persons as envisaged by Rule 16(2) of the aforesaid Rules.

27. No other point was pressed by the learned Counsel for the appellants.

28. The upshot of the above discussion is that the learned Counsel for the appellants has not succeeded in showing us that the order under challenge dismissing 11 writ petitions of the petitioner-appellants is infirm on any count what so ever.

29. The result is that these appeals fail and are hereby dismissed. In the circumstances of the case we leave the parties to bear their own costs.