

**(1971) 03 RAJ CK 0019**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 596 of 1969**

Karam Singh and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

**Date of Decision :** 17-03-1971

**Acts Referred:**

Rajasthan Colonisation Act, 1954 — Section 22

**Citation :** AIR 1971 Raj 265 : (1971) RLW 551 : (1971) 4 WLN 151

**Hon'ble Judges :** V.P. Tyagi, J

**Bench :** Single Bench

**Advocate :** P.D. Mantri and D.K. Soral, for the Appellant; S.K. Tewari, Deputy Government Advocate, L.R. Mehta and Variyam Singh, for the Respondent

**Final Decision :** Allowed

## Judgement

V.P. Tyagi, J.—Karam Singh & four others have filed this writ petition under Article 226 of the Constitution praying that by issuing a writ of mandamus, certiorari or any other appropriate writ, order or direction the respondents may be restrained from dispossessing the petitioners from the plot of land in question and they may further be directed not to dismantle their stalls standing on the disputed land.

2. Learned counsel for the petitioners at the very outset urged that this petition may be treated on behalf of only one petitioner, namely, Karam Singh and the names of rest of the petitioners may be struck off from the array of petitioners.

3. The facts giving rise to this petition are, in a nutshell, as follows:

A piece of land measuring 40" x 40" situate between the Customs Post and the Railway Nala at Kota Junction was leased out to petitioner Karam Singh and his other colleagues in the year 1946-47 when they migrated from Pakistan to India. Since then, according to the allegations made by the petitioner, they were in occupation of this plot of land on which they had put their stalls and were regularly paying the rent to the Municipal Board, Kota. On 25th of April, 1956, after the City Improvement Trust, Kota was formed, this land vested the Trust

and it was sold by the Trust in to one Variyam Singh son of Miyan Singh who has also been added as a party to this writ petition. This land was the subject-matter of prolonged litigation. After the sale of land to Variyam Singh, the City Improvement Trust, Kota threatened the petitioner and his colleagues to evict them therefrom. In 1962 a suit was filed by the petitioner and his colleagues against Municipal Board, Kota for permanent injunction for restraining the Municipal Board, Kota to eject the petitioner and his colleagues from this piece of land. The Munsiff, Kota passed a temporary injunction on 4th of April, 1962 restraining the Municipal Council, Kota from dispossessing the petitioner and his colleagues. This injunction order was however made absolute on 5th February, 1965. It so appears that during the pendency of that suit, Variyam Singh also brought a suit against the petitioner and his colleagues in the year 1963 for ejectment from this land treating them as the tenants. He also, according to the allegations made herein, terminated the tenancy of the petitioner and his colleagues on 8th May, 1963 by serving a notice on them u/s 106 of the Transfer of Property Act. At the time when the petitioner and his colleagues were forcibly ejected from the land, this suit of Variyam Singh was pending in the court of the Civil Judge, Kota.

4. On the one hand, the petitioner and Variyam Singh were engaged in civil litigation and on the other hand, the petitioner and his colleagues had to face another threat from the Central Government as the land in question was claimed as belonging to the Western Railway. The Divisional Superintendent, Western Railway, Kota threatened the petitioner and his colleagues to dispossess them from this land in the year 1968. In order to protect their rights the petitioner and his colleagues filed civil suits for permanent injunction against the Western Railway. In that suit respondent No. 5, the Mandi Committee, was also impleaded as a defendant. When these suits were pending before the Munsiff, Kota, the Divisional Superintendent, Western Railway, Kota initiated proceedings under Public Premises Eviction of Unauthorised Occupants Act, 1958 and these proceedings created a bar for the petitioner and his colleagues to pursue their remedy in the Civil Court and the suits were, therefore, withdrawn. The petitioner and his colleagues, however, filed their objections before the Estate Officer who was empowered to proceed with the proceedings initiated by the Divisional Superintendent, Western Railway, Kota. From this narration of facts, it is clear that the petitioner and his four other colleagues had to take fight against various authorities in different courts of law and offices.

5. The Secretary, Mandi Committee, respondent No. 6 filed an application which purports to be an application u/s 22 of the Rajasthan Land Acquisition Act alleging that the land belongs to the State though it was sold by the Improvement Trust, Kota to Variyam Singh and as the possession of the land could not be handed over to the purchaser Variyam Singh because of the illegal occupation thereof by the petitioner and his colleagues, the petitioner and his colleagues may be evicted therefrom under the provisions of the Colonisation Act. This application has been put on record by the petitioner as Ex. 12. It was

accompanied by an affidavit filed by the Secretary of the Mandi Committee, Shri Mahmood. The Additional District Magistrate (Colonisation), Kota, by his order dated 3rd June, 1969 (Ex, 14) directed that the petitioner and his colleagues may be evicted from the land in dispute under the provisions of Section 22 of the Rajasthan Colonisation Act because he was convinced on the basis of the affidavit filed by the Secretary Mandi Committee that the petitioner and his colleagues were the rank trespassers on this land.

The allegation of the petitioner is that on 6th of June, 1969, when all the Courts were closed, and being Saturday and Sunday, the High Court could also not be approached by them, the respondents, namely, the City Magistrate, Kota, the Additional Superintendent of Police, Kota, the Tehsildar (Colonisation), Kota, Secretary Mandi Committee, Kota and the Superintending Engineer, Public Works Department, Kota, by resorting to the police force, forcibly ejected the petitioner and his colleagues from the land. It is further alleged that after taking the proceedings of ejectment by the use of the police force, the Secretary, Mandi Committee executed a Dakhalnama in favour of the Tehsildar (Colonisation) who was responsible for evicting the petitioner and his colleagues from the land in dispute. In this Dakhalnama, which is Ex. 17 on the file, it has been mentioned in the last sentence that after taking possession of the land from the Colonisation Department the same has been transferred to Variyam Singh.

6. Having felt aggrieved by this high-handed action of the Government authorities, who employed the police power of the State to eject the petitioner and his colleagues from the land in dispute whereupon they were enjoying the rights of lessees since they came to India from Pakistan, this writ petition was filed by invoking the extraordinary jurisdiction of this Court. The petitioner at the time of the filing of this writ petition, however, did not accept this contention of the respondents that he was totally ejected from the land because by that time he was claiming his possession as all his articles were not removed from there and, therefore, he sought a temporary interim order from this Court. This Court by its order dated 12th of June, 1969, restrained the respondents from dispossessing the petitioner and his colleagues from their stalls if they have not been already so dispossessed there-from.

7. By the time this writ petition was filed the petitioner was not in the know of this fact that the possession of the land was transferred to Variyam Singh. This fact came to his knowledge later on and thereafter he impleaded Yariyam Singh as one of the respondents to this writ petition.

8. Different stands were taken by the respondents regarding the dispossession of the petitioner. According to Mr. Soral, the petitioner had not been dispossessed from the land but the stand taken by the respondents was that they were totally thrown out from the land and that the vacant land was handed over to Variyam Singh. This Court after hearing the learned counsel for the parties, ultimately passed the interim order on 15th of October, 1969 with the agreement of the Counsel for the parties that Variyam Singh would not make any construction on

the land during the pendency of the writ petition.

9. The State has filed a reply to this writ petition. The right of the Municipal Council to lease out the land to the petitioner and his colleagues has been denied by the State but this fact has been admitted that the stalls of the petitioner and his colleagues were standing on this piece of land since 1947. The facts are not much in dispute except that according to the version given by the State the force was taken to the spot in order to assist the trespassers for removing their articles from the land and it was done at their request.

10. Variyam Singh has also filed a reply wherein he has asserted his lights to take possession of the land.

11. After the filing of this writ application, the petitioner withdrew the suits that were filed by him for getting permanent injunction against the Municipal Board. Variyam Singh after having taken possession of the land also withdrew his suit against the petitioner and his colleagues. The proceedings taken before the Estate Officer under the Public Premises Eviction of Unauthorised Occupants Act, 1958 are, however, still pending before that authority.

12. The question that arises for determination of this Court in this petition is whether the State Government or its officers could eject the petitioner and his colleagues from this land in the manner they have been ejected. There cannot be any doubt that in order to eject the petitioner and his colleagues from this land, the police force was used by the authorities. It is also not disputed that before taking any action for removing the petitioner and his colleagues from the land u/s 22 of the Colonisation Act no notice of any kind was given to the petitioner and his colleagues. The petitioner was taken by surprise when the authorities went to the spot to eject the petitioner and his colleagues from this land and that the petitioner could not stand against the might of the State which was employed by it for removing him and his colleagues from the land.

13. I need not go into the matter of title or right of the petitioner on this land. Even if the petitioner had no right to retain the possession of the land, was it open to the State authorities to remove him in the manner it was done? If the State authorities were of the opinion that the petitioner and his colleagues were trespassers on this land, they could take action against him and his colleagues in the manner which was allowed by the law and not by using the police power of the State.

14. In similar circumstances, the Punjab High Court in *State of Patiala and E. P. States Union, Patiala v. Mohinder Singh Natha Singh* AIR 1958 Punj 325 has held that the general purpose of the law is that regardless of the actual condition of the title to, or the right of possession of the property, the party actually in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. There is no provision of law which empowers a State Government by force or show of force to evict a person who is in actual possession of immovable property. If the State Government were of the opinion that the State had the

superior title or the better right to possession it is open to them to bring an appropriate action against him and to secure his eviction in accordance with the provisions of law.

15. I entirely agree with the views expressed by their Lordships of the Punjab High Court in the above authority. In this age of rule of law such high-handed action on the part of the Government officials can never be thought of. It is very difficult for the respondents to justify the action taken by them. From the events that have been brought on record it appears that perhaps the State authorities wanted to oblige the purchaser of this land by evicting the petitioner and his colleagues by taking resort to the provisions of Section 22 of the Colonisation Act and handing over the possession thereof to the purchaser. I do not think that the mandate of Section 22 of the Rajasthan Colonisation Act in any manner empowers the Colonisation authorities to take the law in their own hands in this fashion. It is a clear case of high-handed action on the part of the Government officials which must be deprecated by all law-abiding citizens.

16. Learned counsel appearing on behalf of purchaser Variyam Singh urged that if the possession of the land in question is to be restored to the petitioner and his colleagues by allowing their writ petition, then they should be put on terms because being tenants of the purchaser they cannot enjoy the possession free of cost. I think, I need not go into this question because before the petitioner and his colleagues were ejected they were not paying any rent to anybody because of the litigation going on in the court of law. The only course which appears to me to be just in this case is to restore the status quo ante at the time when the ejectment had taken place and leave the parties to take recourse to the court of law to get their rights established.

17. For the reasons mentioned above, the writ petition is allowed, the order passed by the Additional District Magistrate (Colonisation), Kota dated 3rd June, 1969 (Ex. 14) is hereby quashed and the action taken in pursuance of this order against the petitioner and his colleagues is declared illegal. The petitioner and his colleagues shall be restored the possession of the land in question. The petitioner shall get his costs of this writ petition from respondent No. 6 who was the prime mover in this case.