

(1878) 01 CAL CK 0010

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Thacoor Dyal Sing and
Another

RESPONDENT

Date of Decision: Jan. 9, 1878

Citation: (1878) ILR (Cal) 320

Hon'ble Judges: Mcdonell, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

Independently of this there is another reason for which the order must be set aside. In the order of the Magistrate by which he referred the case to the Deputy Magistrate for explanation, it is said that the petitioner before him had asserted that six and twenty villages out of the thirty which formed the subject of the order were actually held in ticca. The Deputy Magistrate in his reply does not deny that there are certain villages in the possession of ticcadars, but he contends that there being a dispute between the contending parties as to collection of rent, it is necessary to decide the question of possession in respect of all the villages held in Khas and ticca jointly, by which he apparently means all the villages, whether held khas or leased out. No doubt it has been held that questions between zemindars as to the right of collecting rents directly from the ryots may be considered by Magistrates, and that this right of so collecting rents is in fact possession within the meaning of Section 530; but that does not apply when there is an intermediate holder who admittedly receives rents from the ryots. Therefore, the order of the Deputy Magistrate is clearly bad as to all the villages which are not held direct by one or other of the zemindars, but are in the possession of farmers. Whether they be six-and-twenty in number or less, is immaterial. It does not appear on this record which villages are held in farm and which are not. Therefore, we are unable to set aside any specific portion of the order of the Deputy Magistrate.

2. The only question before us is, whether we ought to quash his proceeding altogether or direct a further enquiry. We think, on the whole, that it is unnecessary that any further enquiry should be held on the present proceedings. They originated in a suggestion of the Magistrate of the district, and it appears that the Sub-divisional officer would not, but for that, have taken any proceedings u/s 530. He was satisfied with the steps that he had taken, in binding down both parties in recognizances to keep the peace. It is still open to him if he thinks fit to make an enquiry, and he is satisfied that unless proceedings be taken u/s 530, breach of the peace is imminent, he can institute proceedings afresh; but if he should deem it proper to record any fresh proceeding u/s 530, it will be necessary for him to ascertain clearly and define the particular villages or portions of villages to which the enquiry is to apply, excluding all those which are not in the immediate possession of either one party or the other.

[1] [Section 530: Whenever the Magistrate of the District, or a Magistrate of the first class, is satisfied that a dispute, likely to induce a breach of the peace, concerns any land, or the boundaries of any land, or concerning water, fisheries, crops or other produce of land, etc., is likely to cause breach of the peace, he may, if he is of his jurisdiction, such Magistrate shall receive evidence from the parties concerned in such dispute to attend his Court in person, or by agent, and to give in a written statement of their respective claims, and to respect the fact of actual possession of the subject of dispute.

Such Magistrate shall, without reference to the claims of any party to a right of possession, inquire and decide which party is in possession of the land, and the party in possession to be continued until ousted by due course of law.

After satisfying himself upon that point, he shall issue an order declaring the party or parties to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

Explanation.--Such Magistrate may satisfy himself of the existence of a dispute likely to induce a breach of the peace from a report or other information; but the question of possession must be decided on evidence taken before him.]