

PETITIONER:
M/S. ANAMALLAI CLUB

Vs.

RESPONDENT:
THE GOVERNMENT OF TAMIL NADU & ORS.

DATE OF JUDGMENT: 23/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal by special leave arises from the Division Bench Judgment of Madras High Court dated September 24, 1993 made in Writ Appeal No.1055 of 1992.

The undisputed facts are that the appellant was granted licence in respect of an extent of 28.70 acres of Government land in Anamallai, Valparaj Taluk of Coimbatore District for sports and recreation purposes. Notice was issued on May 22, 1992 terminating the licence under Section 3 of the Government Grants Act, 1895 (for short, the 'Act') which was served on its Secretary on May 23, 1992; the land was resumed and the possession thereof was taken with the assistance of the police personnel on the even date. The appellant's writ petition was allowed by the learned single Judge by his order dated August 17, 1992 in Writ Petition No.7160/92 and giving directions therein. Feeling aggrieved the respondent-State filed the appeal and the Division Bench in the impugned Judgment while upholding the termination of the licence under the Act, recorded a finding that "there is no legal impediment at all for resumption of possession of the lands by the Government, without seeking any aid of the provisions of the PPE Act, after the determination of the grant in the manner provided in the grant itself."

Shri Soli J. Sorabjee, learned senior counsel, contended that even assuming that the termination of the grant was in accordance with the grant itself, as found by the Division Bench of the High Court, resumption of the possession without giving an opportunity to the appellant and following the procedure prescribed under the Tamil Nadu Public Premises Act (Eviction of Unauthorised Occupants) Act, 1975 (for short, the 'Eviction Act') is unauthorised and unwarranted. The finding of the Division Bench is, therefore, clearly unsustainable in law. Shri Krishnamurthy, learned counsel for the State, contended that the right of the appellant flows from the grant under which they came into possession. After determination of the grant by issuance of the notice in terms of the grant itself, the appellants thereafter have no right to remain in possession. Therefore, the resumption of the possession by the

respondents in terms of the grant is valid in law. In that situation, the need to take recourse to the provisions of the Eviction Act bears no relevance and need not be followed.

The question is; whether the resumption of possession unilaterally, after determination of the grant in the manner provided under the grant itself, is valid in law as was held by the High Court? We think that the view taken by the High Court is not correct in law. In *Bishan Das & Ors. vs. State of Punjab & Ors.* [(1962 2 SCR 69)], a Constitution Bench of this Court had considered the question whether the Government would unilaterally take possession of the land after termination of the lease. One Ramjidas had built a dharamasala, a temple and shops appurtenant thereto, after having a licence of land from the State Government. The lease was terminated and thereafter when the persons in possession were sought to be dispossessed, without taking any recourse to law, they filed writ petition under Article 226 but remained unsuccessful. When writ petition under Article 32 was filed, this Court had considered the question whether the Government is entitled to resume the land with a minimum use of force for ejection without recourse to law. It was contended therein that there was no dispute as the question of the fact between the parties that the petitioners therein had no right and title to the subject matter in dispute. The writ petition under Article 226 was dismissed on the ground of the disputed question of fact which was upheld in appeal by the Division Bench. A writ petition under Article 32 was filed. The right to possession of land was a fundamental right at that time. It was contended that the Government terminated the lease, as thereafter they were trespassers and so they had no right to resist the Government's power to resume the land. This Court had repelled both the contentions as unsound and has held that the Government violated the fundamental right to possession of land since the petitioners therein were not trespassers. They remained in possession for long time. Pursuant to the lease, they had constructed dharamasala, temple and shops and managed them during the life time of the licensee. After his death, the petitioner and members of the family continued in possession of and in management of the properties which was an admitted possession. Therefore, they were not mere trespassers in respect of the said properties. It was held that on the admitted facts of the case, the petitioners therein could not be said to be trespassers in respect of the dharamasala, temple and shops. The State could be said to be the owner of the property, irrespective of whether it was a trust, public or private having taken the possession unilaterally. It was open to the State to take appropriate legal action for the purpose. It was also held that the State could not remove them from possession except under the authority of law. The same view was reiterated by this Court in *State of U.P. & Ors. vs. Maharaja Dharminder Pd. Singh & Ors.* [(1989) 2 SCC 505 at 516] thus:

"A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease deed does not authorise extra-judicial possession and forcible

dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal' pedigree'. In *Bishan Das vs. State of Punjab* [(1962) 2 SCR 69] this Court said:

"We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order..."

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle. Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law."

In *Lallu Yeshwant Singh vs. Rao Jagdish Singh & Ors.* [(1968) 2 SCR 203], a Bench of this Court had considered the same question after reviewing the case law in that behalf and held that the Government cannot take possession of the land except in accordance with the procedure prescribed under the Act. In that case, the recourse to the provisions under Section 9 of the Specific Relief Act (Section 6 of the present Specific Relief Act, 1963) was upheld. The question was also considered by this Court by one of us (K. Ramaswamy, J.) in *East India Hotels Ltd. vs. Syndicate Bank* [1992 Supp. (2) 29 at 44]. It was held in paragraph 29, 30 and 32 that:

"They must obtain such possession as they are entitled to by proper course. In our jurisprudence governed by rule of law even an unauthorised occupant can be ejected only in the manner provided by law. The remedy under Section 6 is summary and its object is to prevent self help and to discourage people in adopt any means fair or foul to dispossess a person unless dispossession was in due course of

law or with consent.

What is meant by due course of law?

Due course of law in each particular case means such an exercise of the powers by duly constituted tribunal or court in accordance with the procedure established by law under such safeguards of the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a tribunal competent by its constitution, that is by law of its creation, to pass upon the subject matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the State, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise and to have the right determination of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense.

It is thus clear that the course have viewed with askance any process other than strict compliance of law as valid in dispossessing a person in occupation of immovable property against his consent. The reason is obvious that it aims to preserve the efficacy of law and peace and order in the society relegating the jurisprudential perspectives to a suit under Section 6 of the Act and restitute possession to the person dispossessed, irrespective of the fact whether he has any title to possession or not."

The reason is obvious that law attempts to preserve order in the society relegating that the jurisprudential perception stood under Section 6 of the Act irrespective of the possession of the person "dispossessed in respect of the fact whether in possession or not." In paragraph 29, this Court approved the dictum of the Privy Council in *Midnapur Zamindary Co. Ltd. vs. Kumar Naresh Narayan Roy* [AIR 1924

PC144] and held that persons are not persons are not permitted to take forcible possession. They must obtain such possession as they are entitled to by proper course. In our jurisprudence governed by the rule of law even an unauthorised occupant can be ejected only in the manner provided by law. The remedy under Section 6 is of summary trial and its object is to prevent self-help and to discourage people to adopt any means fair or foul to dispossess a person unless dispossession was in due course of law or with consent.

Law makes a distinction between persons in juridical possession and rank trespassers. Law respects possession even if there is no valid title to support it. Law does not permit any person to take law into his hands and to dispossess a person in actual possession without having recourse to a court. The object thereby is to encourage compliance of the rule of law and to deprive the person who wanted, a person in lawful possession to have his removed from possession, according to proper form and to prevent them from going with a high hand and eject such person. Undoubtedly, the true owner is entitled to retain possession even though he had obtained it by force or by other unlawful means but that would not be a ground to permit the owner to take law into his own hands and eject the person in juridical possession or settled possession without recourse to law.

Thus, it could be seen that even after determination of the licence under the Government Grants Act, the Government is entitled resume possession but resumption of possession does not mean unilaterally taking the possession without recourse to law. The Eviction Act contemplates such a procedure. "Premises" defined under Section 3(d) of the Act means land or any building or a part of a building or but and enclosed etc. Section 4 prescribes procedure of issuance of a notice of show cause before eviction giving an opportunity and thereafter taking action under Section 5 of the Act. Unfortunately, on the facts of the case on hand, the respondent, has not adopted the procedure prescribed under Sections 4 and 5 of the Eviction Act after determination of the licence granted under the Government Grants Act. The High Court, therefore, was not right in its conclusion that the procedure prescribed under PPE Act is not applicable to the grants made under the Government Grants Act since the appellants remained in settled possession since a long time pursuant to the grant. After determination of the grant, though they have no right to remain in possession, the State cannot take unilateral possession without taking recourse to the procedure, provided under the Act. It is, therefore, clear that it would have been open to the respondent to have a notice issued to the appellant and give time to vacate the premises within 10 days or 15 days and, therefore, could leave resumed possession with minimal use of police force. We cannot give any direction in this case since possession was already resumed. We have directed not to create third party right in the property. We are not inclined to interfere with the order.

Shri Sorabjee contended that the appellant is entitled to notice before the order of termination of grant made and so the action is bad in law and so the appellant is entitled to restitution of the property. We are not inclined to agree with him. The recourse to Article 226 of the Constitution, to establish title would not be proper remedy. In this case, we are not inclined to go into the question for the reason that the High Court has held that the writ petition is not

maintainable. After termination of the licence by the Government under the Government Grants Act, the Estate Officer appointed under Section 3 cannot go into its correctness and adjudicate in the proceedings under Section 3 thereof. In our view, the Division Bench of the High Court is right in its finding. The Government having determined the licence, the Estate Officer cannot go into the question of legality of the termination of the licence under the Crown (Government) Grants Act to take further steps under Section 4 and 5 of the Act. In that view of the situation in this case, we think that it is not necessary for the State Government to nominate the Estate Officer and for the Estate Officer to give notice under Sections 4 and 5. There is not need for State to file a suit for eviction. But notice in compliance of principles of natural justice should have been given giving reasonable time of 10 or 15 days to vacate the premises and to deliver vacant and peaceful possession; thereafter, the Government would be free to resume possession. Since possession was already taken, through we are not approving of the manner in which the same was taken, we do not think that in this matter notice afresh need be given to the appellant. It may be open to the appellant to avail of any remedy available in law.

The appeal is disposed of accordingly. No order as to costs.