PETITIONER:
M. C. CHOCKALINGAM & ORS.

Vs.

RESPONDENT:
V. MANICKAVASAGAM & ORS.

DATE OF JUDGMENT31/10/1973

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
REDDY, P. JAGANMOHAN

CITATION:
1974 AIR 104 1974 SCR (2) 143
1974 SCC (1) 48

ACT:
Madras Cinemas (Regulations) Act, 1955 (Act No. 9 of 1955) Sections 5(1), (7), (5) (a)--"Person aggrieved" in s. 5(7)-Madras Cinemas (Regulations) Rules, 1957, Rule 13-Interpretation of-Whether applies to case of removal of licence-Tenant continuing in possession after determination of tenancy, and expiry of lease-Distnction between lawful possession and juridical possesssion-Whether non-statutory tenant can raise pleas of lawful possession even on expiry of lease-Specific Act, 1877, Section 9, and Act 43 of 1963, S. 6-Transfer of Property Act, 1882,s. 108(a)-Held, non-statutory tenant cannot continue in "lawful possession" on expiry of lease.
Constitution of India, Art. 226-No manifest error of law-Interference by High Court not warranted.

HEADNOTE:
The appellants-lessors are the sole and absolute owners of the demised premises-a cinema theatre. By a registered composite lease, they leased the land, buildings and the cinematographic equipment in it to the first respondent for a period of three years from 19th August, 1969 subject, inter alia, to recovery of possession on termination of the lease. It was the admitted case of both parties that the lease expired on 18th August, 1972, and that the case was not governed by the Madras Buildings (Lease and Rent Control) Act, 1960, to entitle the tenant to claim statutory protection from eviction under the Act. The appellants issued a notice dated 15th May. 1972, to the first respondent to deliver back, possession on the. expiry of the lease. On 17th June, 1972, the first respondent made an application to the licensing authority under the Madras Cinemas (Regulation) Act, 1955 (briefly, the Act) to renew the licence for resuming Cinema Theatre. The only documentary evidence produced by the respondent in regard to his possession was the expired lease. On 12th July, 1972, the appellants also made an application to grant the licence in their favour. In August. 1972. the licensing authority. by a common order in both the applications, renewed the licence of the respondent and rejected the application of the appellants. On 14th August, 1972, the appellants preferred as appeal to the Board of Revenue. The Board held

that the respondent was not session of the leased property and set aside the order of the 16th September, 1972. The first respondent then filed on 18th September, 1972 a writ petition under Art. 226 of the Constitution. The learned single Judge of the High Court, while interpreting Rule 13 of the Madras Cinemas (Regulations) Rules, 1957 (briefly, the Rules), affirmed the finding of the Board and dismissed the writ petition 'on 8th February, 1973. The respondent thereupon preferred a Letters Patent Appeal. The Division Bench of the High Court, however, relying upon adecision- of this Court in Lalu Yeshwant Singh v. Rao Jagdish Singh and Others (infra). held that the, respondent's possession after the expiry of the lease was lawful possession within the meaning of Rule 13 and allowed the appeal on 4th July, 1973. On appeal by special leave to this Court, the appellants raised the following contentions: (i) the High Court erred in its interpretation of Rule 13 and in holding that the respondents are in lawful possession of the leased properties after expiry of the lease; and (ii) that at any rate the High Court could not interfere with the order of the Board under Art. 226 of the Constitution on the principles laid down by this Court in such matters. The respondents, on the other hand, made the following submissions: (i) that the lessor is not a person aggrieved under section 5(7) of the Act and is, therefore, not competent to appeal to the Board under that section; (ii) that Rule 13 does not apply to a case of renewal of licence; (iii) that "lawful possession" in Rule 13 means only juridical possession i.e. protected by law such as section 9 (old) and section 6 (new) of the Specific Relief Act and, therefore, the High Court rightly held that the respondents were in lawful possession of the property after the expiry of the lease and as such entitled to renewal-of the, licence. and (iv) that the High Court under Art. 226 has jurisdiction to quash an order of the Board if there a manifest error of law in the interpretation of r. 13.

144

Allowing the appeal,

HELD: (1) The appellants were themselves applicants before the competent authority for grant of a licence under the Act and the respondents sought renewal of the same licence. Therefore, the appellants are aggrieved by the order granting renewal to the respondent and refusing the appellant's prayer for the licence. [148G]

(2) Rule 13 is clearly applicable to grant as well as to renewal of a licence. The rule finds place in Part 1-A of the Rules with the title "General". Under section 5(2) (a) of the Act, the licensing authority shall not grant a licence unless it is satisfied that the Rules under the Act have been substantially complied with. Therefore, there is no justification for making any distinction between :rant and renewal of a licence under the provisions of the Act read with the Rules. [153E]

(3) Lawful possession is not litigious possession. It must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property which is wrongfully or forcibly dispossessed from it. Juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession. Rule 13 has got two parts. The first part deals with an applicant for the licence who is the owner of the site, building and equipment and the second part deals with an applicant who is not such an owner. On the admitted case of the parties. it is the second part of R. 13 that is material

in the present case. Under the second part of the rule, the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to the applicant's lawful possession of the property. The fact, that after the expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, in 'View of a special law, his consent becomes irrelevant.

Juridical possession of a tenant after the expiry of the lease would not be a lawful possession within the meaning of Rule 13. All that section 6 of the Specific Relief Act provides is that a person, even if he is a landlord, cannot take the law into his own hands and forcibly evict a tenant after the expiry of the lease. This section has relevance only to the wrongful act of a person, if it be by the landlord, in forcibly recovering possession of the property without recourse to law. Section 6 frowns upon forcible dispossession without recourse to law but does not at the same time declare that the possession of the evicted person is lawful possession. The question of lawful possession does not enter the issue at that stage. All that the court is then required to consider is whether an evicted person has been wrongfully dispossessed and he has come to the court within six months of the dispossession. The various civil rights between the landlord and the tenant will have to be adjudicated upon finally in a regular civil suit if filed. In the context of Rule 13, a tenant on the expiry of the lease. cannot be said to continue in "lawful possession" of the property against the wishes of the landlord if such possession is not otherwise statutorily protected against even lawful eviction through court process. such as under the Rent Control Act.

Law in general prescribes: and insists upon a specified conduct in human relationship and even otherwise, Within the limits of the law courts strive to take note of the moral fabric of the law. In the instant case under the terms of the lease, the property had to be handed Over to the lessor Besides, under section 108(9) of the Transfer of Property Act, 1892, on the determination of the lease, the lessee is bound to put the lessor in possession of the property, The landlord has- not assented to the lessee's continuance in possession of the property. the lessee will be liable to mesne profits which can again be recovered only

145

in terms of his wrongful possession. Under Section 5(1) of the Act., the licening authority in deciding whether to grant or refuse a licence has regard amongst other things to the interest of the public generally. Public interest is. therefore, also involved in granting or refusing a licence. That being the, position the expression "lawful possession" in Rule 13 assumes a peculiar significance of its own in the, context of the Provisions of the Act. Hence in any view of the matter. Possession of the respondents on the expiry of the lease is not lawful possession within the meaning of Rule 13. [152D-153D]

Lalu Yashwant Singh v. Rao Jagdish Singh and Others, [1968] 2 S.C.R. 203 held not applicable.

K. K. Verma v. Naraindas Malkani, I.L.R. [1958] Bombay 950 at 957,Yar Mohammad v. Lakshmi Das, I.L.R. [1958] 2 All, 294

at 404, Midnapur Zamindary Company Limited v. Naresh Narayan Roy. 51 .A. 293 at 299 quoted in [1968] 2 S.C.R. 203/208. and C. Bhavarlal Manging Proprietor, Sri Meliate Talkies, Ootacamund v. Mallay Gounder, 1970 (1) M.L.I. 236. referred to.
An Essay on Possession, in the Common Law 1888 Edn. I Pollack and Wright p. 26,
(4) The Board of Revenue, in appeal, was right in interfering with the order of the licensing authority. The learned Single Judge. of the High Court rightly refused to interfere with the order of the Board. There is no manifest error of law in the order of the Board and there was no scope for interference by the High Court with the order under Article 226 of the Constitution. The Division Bench of the High Court is not correct in its interpretation of R. 13. [153D]

JUDGMENT:
CIVIL APPELLATE JURISDICTION : C.A. No. 1229 of 1973.
Appeal by special leave from the judgment and order dated the 4th July, 1973 of the Madras High Court in W.A. No. 21/73.
S. V. Gupte, J. Ramamarti and V. R. Venkataraman, for the appellants.
M. C. Setalvad, K. S. Ramamurthi, W. C. Chopra and A. Subhashini, for respondent No. 1.
The Judgment of the Court was delivered by
GOSWAMI, J. This appeal by special leave is directed against the judgment of the Madras High Court by which it set aside the judgment of a single Judge of that court in a writ proceeding under Article 226 of the Constitution. The facts may briefly be stated.
The first respondent obtained a registered lease of a cinema theatre known as KapaLi Talkies, Madras, for a period of three years from 19th August, 1969. The lease was a composite lease consisting of the, land, buildings and the cinematographic equipment in it. The monthly rental was Rs. 9,125/-. Among other terms, the lease was to expire on 18th August, 1972. It is not necessary for our purpose to refer to the condition of an earlier termination of the lease under certain circumstances. The lessors (the appellants herein) are the sole and absolute owners of the Kapali Talkies, Madras-28, described in Schedule 'A' to the lease.
It may be appropriate to extract some material portions of the lease executed between the parties, which run as follows :-
Schedule 'A describes the land, buildings, other constructions and immovable things and properties therein with all the appurtenances known as the cinema theatre, Kapali Talkies, situated in No. 52,
11-L447SuP.CI/74
146
Ramakrishna Mutt Road, Raja Annamalaipuram, Madras-28, excluding the room in front side of the main building of the cinema theatre, which is retained by the lessors exclusively for their occupation and Use. The other leased properties are mentioned in Schedules 'B', 'C' and 'D' to the lease. Schedule 'B' describes the projectors and machineries installed in the building. Schedule 'C' describes the seats and furniture. Schedule 'D' describes the fixtures and fittings and installations, equipments and other articles and things and materials. Having so described the leased properties, "the lessors hereby grant unto the lessee ....

by way of lease the land and buildings with other immovable properties and things therein known as Kapali Talkies, Madras-28 .... more particularly described in Schedule 'A' hereunder that all the projectors, machineries, seats, furnitures and other articles and things stated above and more fully described in Schedules 'B', 'C and 'D' hereunder .... in a composite manner as a cinema theatre functionable, and known as Kapali Talkies, Madras-28, above mentioned with the rights to exhibit films as cinema shows therein .... for a specific use of the same as cinema theatre to exhibit films as cinema shows only, for a specific period of three years only commencing from 19-8-1969 and ending with 18-8-1972 on a monthly rent of Rs. 9125/payable by the lessee to the lessors for and throughout the said period of three years .... subject to the covenants and terms and conditions hereinafter contained".

"Cl. 6. The sole feature of the lease is sheer exhibition of films as cinema shows at the said cinema theatre, Kapali Talkies, Madras-28 and not for utilising the said cinema theatre and other things taken. on lease for any other purpose of any kind other than the exhibition of films as cinema shows. The lessee shall strictly observe this".

" Cl. 9. In all transactions, advertisements and banners the lessee shall style himself as 'Lessee of Kapali Talkies, Madras-28' and on no account the name 'Kapali Talkies' shall be changed".

" Cl. 27. The lessee shall make his own arrangements at his-own costs and responsibilities for the running of the said cinema theatre, such as taking out the licence, permits, certificates, and other necessary things.....

" Cl. 35. The lessee shall, on the termination of the lease or on an earlier termination of the lease at any earlier period under any circumstances return back to the lessors forthwith the, properties taken on lease in good, proper and functionable conditions and state in which he has received them- from the lessors".

The above lease admittedly expired on 18th August, 1972. There was a notice dated 15th May, 1972, to the first respondent to deliver back possession on the expiry of the lease. On 17th June, 1972, the first respondent made an application to the Commissioner of Police (briefly the Commissioner) which is admittedly the competent authority under-the Madras Cinemas (Regulations) Act, 1955 (Act No. 9 of 1955) (briefly the Act), to renew the licence. On 12th July, 1972, the appellants as also mace an application to the Commissioner to grant the licence in their favour. In August, 1972, the Commissioner by a common order in both the petitions renewed the licence of the respondent and rejected the application of the appellants. On 14th August,

147

1972, the appellants preferred an appeal to the Board of Revenue which set aside the order of the Commissioner on 16th September,1972. The first respondent then lodged an application under Article 226 of the Constitution in the Madras High Court on 18th September, 1972 and the learned single Judge dismissed the same on 8th February, 1973. The respondent thereafter preferred a Letters Patent Appeal to the Division Bench which by the, impugned judgment allowed the same on 4th July, 1973. The High Court refused to grant leave to appeal to this Court and hence this appeal by special leave.

The Board of Revenue (briefly the Board) accepted the appellants' contention that the respondent was not in lawful possession of the leased property. The learned single Judge of the High Court also held to the same-effect while

interpreting rule 13 of the Madras Cinemas (Regulation) Rules, 1957 briefly the Rules) made under the Act. The Division Bench of the High Court, however, relying upon a decision of this Court in Lalu Yeshwant Singh v. Rao Jagdish Singh & Ors.,(1) held that the respondent's possession after expiry of the lease was lawful possession within the meaning of rule 13 of the Rules. The learned single Judge repelled a contention of the respondents to the effect that the appellants could not be said to be aggrieved persons under section 5 (7) of the Act, which was amended by the Madras Act No. IV of 1961. This does not appear to have been pressed by the respondents before the Division Bench.

Mr. Gupte, learned counsel for the appellants, submits that the High Court is wrong in interpreting rule 13 of the Rules in order to hold that the respondents are in lawful possession of the leased properties after expiry of the, lease. He further submits that at any rate the High Court could not interfere with the order of the Board under Article 226 of the Constitution on the principles laid down by this Court in such matters.

Mr. Setalvad on behalf of the respondents, an the other hand, submits firstly that rule 13 does not apply to a case of renewal of licence; secondly, that the lessor is not a person aggrieved under section 5(7) of the Act and is, therefore, not competent to appeal to the Board under that section; and thirdly, that rule 13 which refers to the 'lawful possession' is only juridical possession, a kind of possession which is protected by law such as section 9-(old), section-6 (new.) of the Specific Relief Act and, therefore, the High Court is right in holding that the. respondents were in lawful possession of the property after the expiry of the lease and as such entitled to renewal of the. licence. It is lastly contended that the High Court on the writ side under Article 226 of the Constitution has jurisdiction to quash an order of the Board if there is a manifest error of law in interpretation of rule 13 of the.Rules.

On the question whether and in what circumstances posse ssion is. lawful. he relies upon- the decision. of this Court- in Lalu Yeshwant Singh's case (supra) and submits that this Court has approved of the

(1) [1968] 2 S.C.R. 203.

148

decision of the Bombay High Court in K. K. Verma v. Naraindas C. Malkani(1) wherein it was observed as follows :-

> "Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have. a right to continue in possession after the termination of the tenancy his possession is juridical and that possession is protected by statute. Under s. 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law.....

He further points out that this Court in the said case also approved of the decision of the Full Bench of the Allahabad High Court in Yar Mohammad v. Lakshmi Das(2) wherein it was observed

> "No question of title either of the plaintiff or of the defendant can be raised or. gone into in that case (under s. 9 of the Specific Relief Act). The plaintiff will be entitled

> to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession'.

He further draws I our attention that in Lalu Yeshwant Singh's case (supra) this Court further approved of the law laid down by the, Privy Council in Midnapur Zamindari Company Limited v. Naresh Narayan Roy(3) to the following effect:

> "In India persons are not permitted to take forecibly possession; they must obtain such possession as they are entitled to through _a Court".

Mr. Setalvad, therefore, submits that in view of the above decisions, the decision of the Madras High Court is correct. TO take the second submission of Mr. Setalvad first, it is sufficient to state that the applicants were themselves applicants before the Commissioner for grant of a licence under the Act and the respondents were praying to the Commissioner for renewing the same licence. It is, therefore, clear that the appellants are aggrieved by the order of the Commissioner in granting renewal to the. respondents and refusing, their Prayer for the licence. it is, therefore, not necessary to deal with The several sections and the rules which are relied upon by Mr. Setalvad to support his contention that the appellants are not aggrieved within the meaning of section 5(7) of the Act. The second submission of the learned counsel, therefore, fails.

(1) I.L.R. (1954) Bombay 950 at 957.
(2) I.L.R. (1958) 2 All. 394 at 404.
(3) 51 I.A. 293 at 299 quoted in [1968] (2) S.C.R. 203, 208.
149

With regard to the submission on the interpretation of rule 13, we may read the same :

> "If the applicant for the licence is the owner of the site, building and equipment, he shall produce to the licensing authority the necessary records relating to his ownership and possession thereof. If he is not the owner, he shall, to the satisfaction of the licensing authority, produce documentary evidence to show that he is in lawful possession of the site, building and equipment".

The rule has got two parts. The first part deals with an applicant for the licence who is the owner of the site, building and equipment and the second part deals with an applicant who is not such an owner. In the present case, the second part of rule 13 is material since the respondent, who was the licensee, is not the owner of the site, building and equipment. This position is admitted bY both the parties. It is, therefore, clear that under rule 13 there respondent is required to produce documentary evidence to show that he. is in 'lawful possession of the site, building and equipment. The only documentary evidence he showed with regard to his possession is the expired lease. Further the

appellants had themselves applied for the grant of a licence and they resisted the respondent's right to possession of the property after expiry of the lease. In these circumstances, it is necessary to consider whether the High Court's view that such a possession is 'lawful possession' is correct or not.

We should also note here that it is admitted by both the parties that the case is not governed by the Madras Buildings (lease and Rent Control) Act, 1960 (Madras Act 18 of 1960) to entire the tenant to claim statutory protection from eviction under the Act.

The principal question, therefore, that comes for decision in this appeal is whether a tenant, who is not a statutory tenant, is entitled to claim to be in lawful possession of the premises on determination of the tenancy, on expiry of the lease. We may quote what. the Division Bench of the Madras High Court held in its own words

> "Such possession is quite good against the entire world except the landlord himself. The landlord will be entitled to evict him by the appropriate proceedings. Until then we are of the view that the erstwhile tenant cannot be regarded as being in unlawful possession. We are inclined to think that his possession is wrongful but not unlawful. It is wrongful, because the erstwhile tenant continues in possession beyond expiry of the period fixed in the lease. It is not unlawful, because the landlord cannot take the law into his own hands and evict him. He can evict him only by proper procedure and, that being the case, it cannot be said that the erstwhile tenant is in unlawful possession'.

Mr. Gupte has, drawn our attention to an earlier decision of the Division Bench of the same High Court in C. Bhavarlal Managing Proprietor, Sri Meliate Talkies, Ootacainund v. Ballay Gounder(1), where the

(1) 1970 (1) M.L.J. 236.

150

High Court refused to interfere with the decision of the licensing authority, affirmed by the Board of Revenue. The High Court in that case held as follows :-

> "The jurisdiction to grant or refuse renewal of a licence is entrusted to the licensing authority which is not the Court. The nature of the jurisdiction so entrusted is clearly for the licensing authority to see whether on the documentary evidence produced, he is satisfied that the applicant was in lawful possession of the site. In exercise of his jurisdiction the licensing authority looks into the matter prima facie and for the purpose of his being satisfied whether- he, the, applicant is in lawful possession. He is not called upon to decide the issue finally between the parties as in a suit. This aspect of the matter should be kept in view when it comes up in the form of a writ petition under Article 226 of the Constitution. In exercise of this power this Court will not, in that background, take upon itself to investigate as to the legality of possession of the site in the hands of the applicant. Ali that can be looked into by this Court, as we are inclined to think, is whether the licensing authority

> has applied his mind to the documentary evidence produced before him and weighed it with a view to satisfy himself as to the legality. Short of caprice, arbitrariness or mala fides the licensing authority would more than have done his duty if he had gone through that process. If this Court is satisfied about it, will not further go into the rival position in regard to the legality of possession of the site which will not necessarily be the final pronouncement between the parties but leave the issue to be tried as between them in a suit in the appropriate civil Court."

We are concerned in this case with the concept of 'lawful possession' in the context of the Act with which we are concerned. As stated earlier, rule 13 has 'got two parts and we are concerned in this case with the second part. A great stress has been given by Mr. Setalvad upon the decision of the Supreme Court in Lalu Yeshwant Singh's case (supra) where this Court considered the possession of a tenant after expiry of the lease, as in this case, as a juridical possession in the context of a provision similar to S. 9 of the Specific Relief Act. He emphasises that such a juridical possession would be a lawful possession, as it is protected by law, namely, under section 6 (new) of the Specific Relief Act. Mr. Setalvad submits that since even with the best of title to the property the landlord cannot forcibly dispossess a tenant after expiry- of the lease, his possession is not only protected by law but also recognised by law and, therefore, his possession is lawful possession and the licensing authority was right in renewing the licence which the Board of Revenue had wrongly interfered with. After giving anxious consideration, we are unable to accept the submission of Mr. Setalvad. All that section 6 (new) of the Specific Relief Act provides is that a person, even if he is a landlord, cannot take the law into his own hands and forcibly evict a tenant after expiry of the lease. This section has relevance only to the wrongful act

151

of a person, if it be by the landlord, in forcibly recovering possession of the property without recourse to law. Section 6 frowns upon forcible dispossession without recourse to law but does not at the same time declare that the possession of the evicted person is a lawful possession. The question of lawful possession does not alter the issue at that stage. All that the court is then required to consider is whether an evicted person has been wrongfully dispossessed and he has come to the court within six months of the dispossession. The various civil rights between the landlord and the tenant will have to be adjudicated upon finally in a regular civil suit if filed. Mr. Setlvad has drawn our attention to the definition of the word 'juridical' in Black's Law Dictionary, Fourth edition, at page 990. There the definition is given as follows

> Juridical : "Relating to administration of justice. or office At. of a judge.
> "Regular; done in conformity to the laws of the country and the practice which is there-observed".

Mr. Setalvad submits that possession of the licensee in this case is in conformity with the provisions of the Specific Relief Act and what is juridical is also lawful. In the same Dictionary at page 1032 the word 'lawful' is also defined as follows:-

Lawful : "Legal; warranted or authorised by the law; having the qualifications prescribed by law; not contrary to. nor forbidden by the law".

It is difficult to appreciate how possession in the instant case can be said to be "warranted or authorised by the law" as per the above definition. On the other hand, what is 'contrary to or forbidden by the law' is only the forcible dispossession of a tenant which may even engender breach of the peace. There is a very interesting discussion about the meaning of 'lawful possession' in part 11, Chapter I of Pollock & Wright's book "An Essay on Possession in the Common Law", 1888 edition, at page 26. According to the learned authors

" Legal possession, the state of being a possessor in the eye of the law .... but it may exist .... either with or without a rightful origin".

The illustrations given in the book at pages 27 and 28 are more interesting.

"A tailor sends to J.S's house a coat which J.S. has ordered. J.S. puts on the coat, and then has both physical control and rightful possession in law. J.S. takes off the coat and gives it to a servant to take back to the tailor for some alterations. Now the servant has physical control (in this connexion generally called 'custody' by, our authorities) and J.S. still has the possession in law.

While the servant is going on his errand, Z assaults him and robs him of the coat. Z is not only physically master of the coat, but, so soon as he has complete control of it,

152

he has possession in law, though a wrongful possession ..... " 'Lawful possession' means a legal possession which is also rightful or at least excusable; this may be consistent with a superior right to possess in some other person".

The learned authors have further put in a word of caution observing

"The whole terminology of the subject, however, is still very loose and unsettled in the, books, and the reader cannot be too strongly warned that careful attention must in every case be paid to the context".

Mr. Gupte strenuously submits that 'lawful possession' cannot be diverced from an affirmative positive legal right to possess the property and since the lease had expired by efflux of time that a tenant in this case had no legal right to continue in possession. In the context of rule 13, we are clearly of _opinion that a tenant on the expiry of the lease cannot be said to continue in 'lawful possession' of the property against the wishes of the landlord if such a possession, is not otherwise statutorily protected tinder the law against even lawful eviction through court process, such as under the Rent Control Act. Section 6 of the Specific Relief Act does not offer such protection, but only, as stated earlier, forbids forcible dispossession, even with the best of title.

Turning to rule 13, even in the first part if the applicant for the licence is the owner of the property he has to produce before the licensing authority the necessary records

not only indicating to his ownership but also regarding his possession. It is implicit, that the owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary to be qualified .by 'lawful' in the first part of rule 13. If, however, the applicant for the licence is not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful', therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the, property by resisting a suit for eviction, does not establish, a case in law to answer the requirement of lawful possession of the property within the meaning of rule 13. Lawful possession cannot be established without the concomitant existence of lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed' from it. This Court in Lalu Yeshwant Singh's case (supra) had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is

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possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession. Law in general prescribes 'and insists upon : specified conduct in human, relationship or even otherwise. Within the limits of the law, courts strive to take note of the moral fabric of the law. In the instant case, under the terms of the lease, file property had to be handed over to the lessor. Besides under section,8(q) of the Transfer of Property Act, on the determination of' the. lease, the lessee is bound to put the lessor into possession of the property. Since the landlord has not assented to the lessee's continuance in possession of the property, the lessee will be liable, to mesne piofing which can again be recovered only in terms of his wrongful possesion. Under section 5(1) of the Act, the licensing authority in deciding whether to grant or refuse a licence has regard, amongst others, to the interest of the public.generally. Public interest is, therefore also involved in granting or refusing a licence. That being the position, the expression ,lawful possession' in rule 13 assumes a peculiar significance of its own in the context of the provisions of the Act. Here in any view of the matter possession of the respondents on the expiry of the lease is not lawful possession within the meaning of rule 13. The High Court, is, therefore, not correct in its interpretation of rule 13. The Board of Revenue in appeal was, on the other hand, right in interfering with the order of the licensing authority and the learned single Judge of the High Court rightly refused to interfere with the order of the Board under Article 226 of the Constitution.

We are also unable to accept the submission of Mr. Setalvad

that the case of renewal of a licence of this type is different from that of a grant. Rule 13 finds place in Part I-A of the Rules with the title 'General'. Under section 5(2)(a) of the Act, ,lie licensing authority shall not grant a licence, unless it is satisfied that the rules made under this Act have been substantially complied with We, therefore, do riot find any justification in making a distinction between grant and renewal of a licence under the, provisions of the Act read with the Rules. Rule 13 is, therefore, clearly applicable to grant as well as to renewal of a licence.

With regard to the last submission of Mr. Setalvad, in our view, there is no manifest error of law in the order of the Board and there was no scope for interference by the High: Court with tile order under Article 226 of the Constitution. In the result the decision of the Division Bench of the High Court is set aside and the application under Article 226 of the Constitution in the High Court stands dismissed. The appeal is allowed with costs.

S.B.W. Apppeal allowed.

154