

(1998) 10 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5918 of 1997

Amrit Varsha Hindi Dainik

APPELLANT

Vs

Bihar State Agriculture Marketing Board and Another

RESPONDENT

Date of Decision : 16-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Constitution of India, 1950 — Article 226

Citation : AIR 1999 Patna 181 : (1999) 1 PLJR 1

Hon'ble Judges : Sachchidanand Jha, J

Bench : Single Bench

Advocate : Binod Kumar Kanth and Naresh Dikshit, for the Appellant; K.P.Yadav, S.C. and Suresh Kumar, J.C. to S.C.V., M.I. Verma, L.K. Bajla and Pravin Kumar Sinha, for the Respondent

Judgement

S.N. Jha, J.—The petitioner is a Hindi newspaper published from Patna and Dhanbad having its registered office in the premises in question, which is part of the building known as Pant Bhawan on Bailey Road in the town of Patna. The writ petition was initially filed for quashing the notice dated 5-5-97, issued by the Sub-Divisional Officer, Sadar, Patna (described as "House Controller" in the notice) in Eviction Case No. 7 of 1997 calling upon the petitioner to appear and participate in the eviction proceedings on the dated fixed, namely, 6-5-97. The petitioner objected to the maintainability of the proceeding by filing an application to that effect on 7-7-97. Two days earlier on 5-7-97 it had filed the present writ petition in this Court. The objection was rejected by the Sub-Divisional Officer, Sadar, Patna, describing himself as "competent authority" on 22-11 -97. It may be mentioned here that the Sub-Divisional Officer of the concerned Sub-division exercises the powers of "Controller" Under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 ("BBC Act" for short) and "competent authority" under the Bihar Government Premises (Rent Recovery and Eviction) Act, 1956 ("the Government Premises Act" for short). It may also be mentioned here that the objection of the petitioner as to the maintainability of

the proceeding rested primarily on the ground that the Government Premises Act applies to "Government premises" within the meaning of that Act and inasmuch as the building in question i.e. Pant Bhawan belongs to the Bihar State Agricultural Marketing Board ("the Board" for short) which is not a part of the Government, the eviction proceeding under the Government Premises Act was not maintainable. The Sub-divisional Officer held that the Board is a statutory body created under the Bihar Agricultural Produce Market Act, 1960 over which the State Government has full control and, therefore, the property and the assets of the Board are Government property. After passing the aforesaid order dated 22-11-97 the Sub-divisional Officer proceeded to pass final order on 2-12-97. He held by the said order that the petitioner was in huge arrear of rent to the tune of more than Rs. 3 lacs; running of the press business was also unauthorised and, therefore, the petitioner was in unauthorised occupation of the premises. The Sub-divisional Officer, accordingly, directed it to vacate the premises within 15 days from the date of receipt of the order u/s 4 of the Government Premises Act, failing which it would be evicted by use of force as may be necessary. I shall refer to the said two orders dated 22-11-97 and 2-12-97 again in this judgment.

2. The petitioner filed an application (IA No. 8282/97) for stay of the operation of the orders dated 22-11-97 and 2-12-97. On 19-12-97 this Court passed an interim order directing that till further hearing in the stay matter on 9-1-98, the petitioner will not be forcibly evicted from the premises in pursuance of the order dated 2-12-97. After the respondent-Board filed its counter-affidavit in the stay matter, on 2-2-98 the Court admitted the writ petition and directed that during its pendency the petitioner will not be evicted, from the premises in question provided it goes on paying monthly rent as legally payable in terms of the conditions laid down in the lease deed by 15th day of the following month. In view of the controversy regarding the quantum of arrear the Court directed the petitioner and the Managing Director of the respondent-Board to sit together and ascertain the arrear amount within three weeks of receipt/production of the order, clarifying that while ascertaining the arrear amount the Board will take into consideration and adjust the amount already paid by the petitioner. The Court further directed that after the arrear amount is so determined, the same must be paid by the petitioner within one month. The Court observed that if the petitioner fails to comply with any of the aforesaid directions, the Board shall be at liberty to take steps for its eviction from the premises in question in accordance with law. There is a dispute as to what happened between the parties in the light of the aforesaid order dated 2-2-98. I shall refer to the relevant facts in this regard later in this judgment. At this stage, I may mention that in the light of the aforesaid order dated 2-2-98, a meeting was held on 5-3-98 in which, amongst others, the Managing Director of the Board and the petitioner participated. In the said meeting the petitioner was informed that the arrear up to February, 1998 had accumulated to Rs. 13,07,589/- after making adjustment of the amount earlier paid by it. At the request of the petitioner, the meeting was adjourned to 11-3-98. It was agreed that a statement of the accounts will be

served on it in the meantime. On 7-3-98 the statement was served. However, neither on the next date i.e. 11 -3-98 nor thereafter the petitioner appeared for meeting. The Board purporting to act in the light of the order dated 2-2-98 of this Court proceeded with the eviction of the petitioner from the premises commencing the process on 14-6-98. On 15-6-98 an application (LA. No. 6314/98) was filed to restrain the respondents from evicting the petitioner till disposal of the writ petition. The application came up for hearing before the Vacation Bench off 16-6-98. After hearing the parties, this Court did not pass any positive order; it merely directed the respondents to strictly follow the interim order passed earlier on 2-2-98. When the stay matter came up for further hearing on 26-6-98, this Court took the view that in the facts and circumstances of the case, in order to finally settle the dispute one way or the other, it would be appropriate to hear the writ petition itself at an early date. With the consent of me parties, thus, the writ petition came up for hearing on 9-7-98 and thereafter.

3. Mr. Binod Kumar Kanth, learned Counsel for the petitioner, submitted that the impugned order of eviction dated 2-12-97 pursuant to which the petitioner has been evicted from the premises is without jurisdiction inasmuch as the premises cannot be called "Government premises" within meaning of the Government Premises Act under which Sub-divisional Officer has jurisdiction to get unauthorised occupants evicted from the Government Premises on grounds mentioned in Section 4 of that Act. Mr. Kanth submitted that the order cannot be construed as one passed under the BBC Act, for, that Act contemplates eviction of a tenant pursuant to decree of the Civil Court on any of the grounds mentioned in Section 11 of the Act and, besides, the Sub-divisional Officer has no power of eviction under that Act. It was pointed out that as a matter of fact no such power is possessed by the Sub-divisional Officer under any other law except the Government Premises Act. Mr. Kanth also pooh-poohed the respondents' case regarding petitioner's alleged non-co-operation in the arrear ascertainment proceeding pursuant to order dated 2-2-98 passed by this Court. In this connection he pointed out that although both before the Sub-divisional Officer and this Court at the time of passing the interim order dated 2-2-98, the stand of the Board was that the petitioner was in arrear of Rs. 3.79 lacs, and it was the correctness of that amount which was to be gone into, in course of meeting on 5-3-98 the Board took the stand that the amount of arrear was Rs. 13,07,589/- up to February, 1998. Mr. Kanth highlighted that apart from the payment already made by the petitioner towards rental dues, it was entitled to adjustment of the amount which it had spent in making repairs of the basement floor when it started leaking. He pointed out that a huge amount was also outstanding against the State Government as cost of advertisement which were kept pending for long time for extraneous consideration. It was submitted that the State Government for extraneous reasons wanted to harass the petitioner as it had published some news items which were considered to be hostile to the powers-that-be. Mr. Kanth also made a grievance that many items of the Press were taken away and have not been accounted for by the respondents as yet.

4. At this stage, the relevant provisions of the Government Premises Act may be noticed. It is an admitted position that the impugned order has been purportedly passed and action taken under that Act. The said Act was enacted to provide for collection of rents from persons in occupation of Government premises and for eviction of persons from such premises. Section 4 provides that notwithstanding anything to the contrary contained in any law for the time being in force, if the competent authority is satisfied that the person authorised to-occupy any Government premises has committed certain acts as mentioned therein or any person is in unauthorised occupation of any Government premises, it may order that person to vacate the premises within time-frame and if such person refuses or fails to comply with such order, to evict him and take possession of the premises. The Act defines the term "allotment" to mean the grant, in writing, by on behalf of the State Government, of a right of use and occupation of any Government premises to any person but does not include a grant by way of lease. "Government Premises" has been defined u/s 2(c) to mean any premises belonging to, or taken on lease or requisitioned by, the State Government. The term "unauthorised occupation" has been defined u/s 2(g) to mean the occupation of Government premises by any person either without any allotment or after the expiry of one month from the date on which an allotment is cancelled u/s 3.

It is an admitted position that the building in question belongs to the Bihar State Agriculture Marketing Board, which is a statutory authority, under the Bihar State Agricultural Marketing Board Act, 1960, having an independent legal personality distinct from the State Government. It is, therefore, obvious that the building owned by it cannot be said to be Government premises within meaning of the Government Premises Act and, therefore, no proceeding could be initiated for eviction of the petitioner treating it as an unauthorised occupation under the said Act.

5. Mr. M. I. Verma, learned Counsel for the respondent-Board, did not make any serious endeavour to justify the maintainability of the eviction proceeding under the Government Premises Act before the Sub-divisional Officer. He submitted, perhaps, to dispel the impression as to the high-handedness of the concerned officer that he (Sub-divisional Officer) purported to assume jurisdiction under a wrong notion that the Agricultural Marketing Board being "State" or "other authority" under Article 12 of the Constitution of India, its assets and properties would be deemed to be the assets and properties of the Government. The Sub-divisional Officer being oblivious of the distinction between the "State" and the "Government" appeared to think, it was submitted, that the building in question belonged to the State Government, therefore, the provisions of the Government Premises Act were applicable. Mr. Verma, however, contended that even if the impugned order of eviction is held to be null and void on the ground of absence of inherent jurisdiction, the petitioner in the facts and circumstances of the case is not entitled to relief of restoration. In other words, no consequential relief should be granted to it. In this connection Mr. Verma highlighted the fact that the

petitioner committed successive defaults not only in the matter of payment of rent but also in the matter of ascertainment of the arrear amount in the light of the interim order of this Court. He submitted that the fact that the petitioner was in arrear of rent to the Board is a rather admitted position. He referred to several documents in this regard. Mr. Verma denied the allegation that any material or item of property of the Press was missing. He referred to the Inventory prepared by the Magistrate in this connection. In support of the contention that in the facts of the case and in view of its conduct the petitioner is not entitled to any consequential relief, Mr. Verma placed reliance on M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another, ; A.M. Allison Vs. B.L. Sen, ; and Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, .

6. I have considered the submissions of the counsel for the parties. In the facts and circumstances and in view of the contentions raised on behalf of the parties, I do not propose to go into the arithmetic of the dispute as to the amount of arrear of rent due to the respondent-Board. The documents brought on record leave no room for doubt that the petitioner was in arrear. Notwithstanding its counter claim of adjustment of the amount which it had allegedly spent in making repairs etc. As regards the amount allegedly lying due with the State Government on account of unpaid bills, as rightly pointed out by Mr. Verma, the Board cannot be held responsible for such non-payment and the amount of unpaid bill, if any, cannot be adjusted against its dues. In view of the fair stand of Mr. Verma, learned Counsel for the respondents, it is also not necessary to go into the question as to whether the Government Premises Act under which the impugned order of eviction was passed by the Sub-divisional Officer was applicable to the premises in question or not. I proceed on the assumption, firstly, that the Government Premises Act was not applicable to the premises and the order of eviction dated 2-2-98 was, therefore, without jurisdiction; and secondly, that the petitioner was in arrear of rent to the Board. The thrust of the respondent's case, as noted above, was that even though the order is held to be without jurisdiction, having regard to the conduct of the petitioner, it is not entitled to any consequential relief.

7. Proceeding on the two assumptions afore-said, the dispute lies in a narrow compass. The only point for consideration is whether pursuant to the said impugned order dated 2-2-98 the petitioner could be evicted from the premises and, if not, whether it is entitled to any consequential relief of restoration of possession.

8. It is an admitted position that the petitioner was a tenant under the respondent-Bihar State Agricultural Marketing Board. While according to the petitioner, the tenancy commenced from 1983, according to the respondents, the lease commenced from 6-7-87. According to the respondent's case, as stated in

the counter-affidavit, the premises was let out to the petitioner for a period of three years on a monthly rent of Rs. 5,560/- @ Rs. 2/- per sq. ft. area. It was agreed that if the petitioner would continue to occupy the premises even after expiry of the period of lease i.e. three years without written consent of the Board, it would pay rent @ three times the monthly rent i.e. Rs. 16,680/-. The petitioner also agreed to pay interest @ 12% per annum on arrear of rent. In the event of default in payment of rent the petitioner would be liable to be evicted. It is said that between August, 1987 and July, 1998 the petitioner paid a sum of Rs. 11,120/- only as against Rs. 66,720/- rent due for the said period. No rent was paid thereafter up to July, 1990 when the period of three years expired. According to the respondents a sum of Rs. 21,461/- became payable as interest amount for delayed payment of rent since the beginning of the lease. No rent was paid even thereafter until 30-9-91 when the aforesaid sum of Rs. 66,720/- was paid. However, the petitioner again committed defaults. It is not necessary to mention the further details of the defaults committed by the petitioner. As I have already pointed out above, notwithstanding the counter-claim of the petitioner it appears to be rather an admitted position that the petitioner had committed defaults and was in arrear of rent. The point is whether for the defaults in payment of rent the petitioner could be evicted from the premises by taking recourse to summary proceedings. In view of the provisions of the BBC Act, the answer has to be given in the negative. The BBC Act has been enacted to regulate the letting of building and the rent of such building and also to prevent unreasonable eviction of tenants therefrom in the State of Bihar. Except the buildings owned by the local authority or the State Government or the Central Government or the Bihar State Swetambar Jain Trust Board or the Bihar State Digambar Jain Trust Board and the Wakfs under the control of the Bihar Wakf Board, as provided u/s 32 of the Act, the Act is applicable to all buildings within meaning of Section 2(b) of the Act in the whole of the State of Bihar. It is not the case of the respondent-Board that it comes under any of the classes mentioned in Section 32. There, thus, cannot be any doubt that the provisions of the BBC Act are applicable to the building in question. As noticed above, it is the admitted case of the Board that the petitioner was inducted as tenant and, therefore, the relationship of landlord and tenant i.e. the lessor and lessee cannot be doubted.

9. Section 11 of the BBC Act provides the grounds of eviction of tenants. So far as relevant, it reads:--

"Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to eviction there from except in execution of a decree passed by the Court on one or more of the following grounds :--

(a) to (c)

(d) Where the amount of two months rent, lawfully payable by the tenant and

due from him is in arrears by not having been paid within the time fixed by contract, or in the absence of such contract, by the last day of the month next following that for which the rent is payable or by not having been validly remitted or deposited in accordance with Section 16;

(e)

10. It is well-settled legal position that a tenant after expiry of the period of lease or its termination does not become a trespasser; in law his position vis-a-vis the house is that of a statutory tenant. The position cannot be said to be worse from the point of view of the tenant where he commits any default in payment of rent. In *V. Dhanapal Chettiar Vs. Yesodai Ammal*, -, a Seven-Judge Bench of the Supreme Court observed and laid down that a tenant continues to be a tenant even after forfeiture of tenancy under the Transfer of Property Act, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the relevant Rent Control Act of the State, not otherwise. As regards the right of such a person, way back in the case of *Midnapore Zamindari Company Limited 1951 I.A. 243*, the Privy Council observed :

"In India persons are not permitted to take forcible possessions, they must obtain such possessions as they are entitled to through a Court."

A Full Bench of the Allahabad High Court in *Yar Muhammad and Another Vs. Lakshmi Das and Others*, , stated that the law respects possession even if there is no title to support it and it will not permit any person to take the law in his own hands and to dispossess the person in actual possession without taking recourse to the Court. These observations were approved by the Supreme Court in *Lallu Jaswant Singh v. Sri Jagdish Singh AIR 1968 SC 620*. Earlier in *Bishan Das and Others Vs. The State of Punjab and Others*, , the Supreme Court observed (at Page 1575) :

"The petitioner could be dispossessed if at all only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioner by the display of force, exhibits a callous disregard of the normal requirement of the rule of law, apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of a peaceful possession of property." The principle was reiterated in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , in which it was held that the possession of the lessee even after the expiry of the lease and its termination is juridical in nature and the lessee cannot be dispossessed otherwise than in due course of law.

11. Viewed in the light of the law laid down by the Apex Court it is too obvious that the action of the respondents in getting the petitioner evicted from the premises pursuant to an order which was wholly illegal and without jurisdiction

and, if I may say so null and void, is completely arbitrary and illegal.

12. Mr. M. L. Verma sought to find shelter under the aforesaid order of this Court dated 2-2-90 by which white directing the parties to sit together and ascertain the arrear amount, and further directing the petitioner to pay the arrear amount after it is so determined within one month, this Court had observed that if the petitioner fails to comply with any of the directions, the respondents, shall be at liberty to take steps for evicting the petitioner from premises in question in accordance with law. Mr. Kanth in this regard laid emphasis on the words "in accordance with laws occurring in the said order and submitted that failure on the part of the petitioner to comply with the directions contained in the order dated 2-2-98 and pay the amount of arrear merely entitled the Board to take steps for eviction but in accordance with law. In other words, according to Mr. Kanth, by virtue of said order, after the petitioner failed to pay the amount of arrears, the Board should have filed suit for eviction on the ground of defaulter in terms of Section 11(1)(d) of the BBC Act. The order did not authorise the respondents to take the law unto themselves and evict the petitioner from the premises. I find substance in the contention of Mr. Kanth on behalf of the petitioner.

13. It is to be kept in mind that the writ petition was filed challenging the jurisdiction of the Sub-divisional Officer who had issued notice dated 5-5-97 describing himself as "House Controller'", which expression finds mention in the BBC Act under which he has got limited jurisdiction, and finally passed the impugned order as "competent authority" under the Government Premises Act under which also he had no such jurisdiction, having regard to the fact that the premises in question are admittedly not Government premises. It was in that context that the interim orders were passed, firstly on 19-12-97 and, thereafter, on 2-2-98. The interim order passed on 19-12-97 was to the following effect:--

"In the meanwhile, however, petitioner will not be forcibly evicted from the premises of the Pant Bhawan, the building in question, in pursuance of the order dated 2-12-97 passed by the Sub-divisional Magistrate-cum-Competent Authority, Sadar, Patna."

The relevant part of the order dated 2-2-98 runs as follows :

"During the pendency of this writ application, petitioner shall not be evicted from the premises in question, provided the petitioner must go on paying monthly rental as legally payable in terms of the conditions laid down in the lease deed by 15th of the following month. As regards the arrears of rent, there seems to be some dispute regarding the quantum. Accordingly, I direct the petitioner and the respondent-Managing Director of the Marketing Board to sit together and ascertain the arrears amount within three weeks from the receipt/production of this order. While ascertaining the arrear amount the respondent-Board will take into consideration the amount already paid by the petitioner and the said amount shall be adjusted against the arrears so determined. The arrear amount so

determined, after adjusting the amount paid by the petitioner, must be paid by the petitioner within one month therefrom. If the petitioner fails to comply with any of the directions made hereinabove, the respondent-authority shall be at liberty to take steps for evicting the petitioner from the premises in question in accordance with law."

14. As on 19-12-97 and 2-2-98 the question for consideration before this Court was whether the Sub-divisional Officer was competent to pass the order of eviction. While admitting writ petition on 2-2-98 this Court directed that the petitioner shall not be evicted from the premises but made the order subject to the condition that the rent is paid by the petitioner regularly by the 15th day of the next month. The latter part of the order, referred to above, was apparently passed in view of the stand of the respondents that the petitioner was also in arrear of rent. It was in that context that this Court directed the parties to sit across the table so that the arrear amount is ascertained. While permitting the respondents to take steps for eviction in the event of non-compliance of direction in this regard and non-payment of the rent -- current or arrear, this Court never intended to confer jurisdiction, and it could not have done so, to evict the petitioner pursuant to the impugned order dated 2-12-97 without deciding the controversy as to whether it was a valid order or not. It is to be kept in mind that even the counsel for the respondents found it difficult to sustain the said order dated 2-12-97. In that view of the matter, I do not think it would be a proper construction of the order dated 2-2-98 to hold that the order permitted the respondents to evict the petitioner by using force without taking recourse to suit. Although, it is well settled, the words of judgment or order cannot be read as words of statute, nevertheless, in view of painstaking reliance placed on behalf of the respondents on the said order, I would observe that the words "to take steps for evicting the petitioner from the premises in question" cannot be interpreted in the manner suggested on their behalf. In any view, the said words were followed by the words "in accordance with law" which clearly means that in the event of non-compliance of the direction and non-payment of rent, the respondents could have instituted suit for eviction even during pendency of writ petition in this Court. In my opinion, it was also open to the respondents to bring the subsequent conduct of the petitioner relating to non-compliance of the order to the notice of this Court and seek appropriate direction; instead, it proceeded to get the petitioner evicted by use of force assuming that default in payment of rent or, to use the phrase "acts of omission", gave them an occasion to evict the petitioner from the premises. If this were so, it would be patently in the teeth of the provisions of Section 11 of the BBC Act which by reason of non obstante clause overrides anything contained in any contract or law to the contrary. In other words, in all cases of default in payment of rent with respect to building governed by the BBC Act, tenant-lessee cannot be evicted except in execution of a decree passed by the Court on the ground of default.

15. The submission that the conduct of the petitioner disentitles it to any relief may at first blush appear to be attractive but it is not so. If the Courts were only

to see the conduct of defaulting tenant and refuse to come to their rescue on the ground of such default, it would rent of the provisions of Section 11 of the BBC Act redundant. It would also give a wrong message to the public. In a recent case of Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others, , the Supreme Court did not approve of the eviction of the person concerned without taking recourse to process of law. The following observations made in that case may usefully be noticed (at Page 2103):--

"The Court cannot blink at their unlawful conduct to dispossess the appellants from demised property and would say that status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law abiding citizens and rule of law would remain a mortuary."

16. None of the decisions cited by the counsel for the respondents fits in the facts of the present case. The case of M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, , was a case of refund of cess. The case of Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , was also a case of refund of excess market fee. The Supreme Court declined to pass order for refund on the ground that the buyers at any time could recover the excess market fee from the purchasers. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the Court declined to grant relief to the appellants on the ground that he had been set up by others who had earlier unsuccessfully challenged the grant of contract, and the appellants were found to have had no interest in the litigation, in A. M. Allison v. B. L. Sen (supra), the Court observed that the proceedings by way of certiorari under Article 226 are "not of course". The High Court has power to refuse the writ if it is satisfied that there was no failure of justice, and in appeals which are directed against the orders of the High Court in application under Article 226, the Supreme Court can refuse to interfere unless it is satisfied that justice of the case requires it. The Court held on the facts of the case that it was not so satisfied to interfere. In Moon Mills Limited v. Industrial Court AIR 1967 SC 1450 (supra), the Court declined to pass any order on account of the laches of the petitioner. In that connection it made observations regarding the discretionary nature of the power under writ jurisdiction. In The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another, , the Court observed that where the order had been passed by an authority without giving adequate opportunity of hearing, the matter requires to be remanded to it for fresh hearing but where the order had been passed without jurisdiction and it is found that some other authority had jurisdiction in the matter it will be open to it to direct that authority to deal with the matter. This decision was cited on the point that even if the order of the Sub-divisional Officer is found to be illegal and without jurisdiction, the matter may be remanded to proper forum. However, as noted above, the proper forum being Civil Court, the

question of remand to it does not arise, for, CPC lays down a definite procedure for institution of suits and its trial. In Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , the notice issued u/s 146(1) of the Income Tax Act by the Income Tax Officer was stayed by the High Court. Subsequently, at the stage of final disposal, direction was issued to the Income Tax Officer to make fresh assessment. In the Supreme Court plea was taken that fresh assessment proceedings had become time-barred. The Supreme Court repelled the contention observing that the party sought to take advantage of the circumstance of filing writ petition but for which assessment would have been made pursuant to the impugned notice. I fail to understand how any of these decisions can be of any assistance to the respondents.

17. It would, thus, appear that none of the cases cited by Mr. Verma is of any avail to the respondents. Nevertheless, in the facts and circumstances, I am not inclined to direct the respondents to restore back possession of the premises to the petitioner. The petitioner appears to be a chronic defaulter and even if it be conceded that it was entitled to the adjustment of the amount which it had spent in repairs for which no permission had been obtained by the respondent Board, having regard to the past conduct and overall view of the matter it is doubtful if the restoration of the premises would be a proper relief. Instead, I am of the view that the petitioner should be compensated for the loss caused to it by forcible dispossession. In the facts and circumstances, in my opinion, the ends of justice would be served by directing the respondent-Board to pay compensation to the petitioner which I would quantify at Rs. 1 lac. In addition to this the petitioner may institute a suit for recovery of the price of the goods which, according to it, have not been accounted for or returned to its possession, and for damages. It is obvious that in writ jurisdiction it is not possible to decide disputed questions of fact in this regard. In suit where evidence, can be conveniently adduced, it is open to the parties to prove their respective case.

18. In the result, the impugned notice dated 5-5-97, as well as the orders dated 29-11 -97 and 2-12-97 in Eviction Case No. 7 of 1997 before the Sub-divisional Officer, Sadar, Patna, are quashed. The petitioner is held entitled to compensation of Rs. 1 lac payable by the Board within two months. Delay in payment will make the Board further liable to interest @ 12 per cent per annum. I would make no further order as to costs.

19. The writ petition stands allowed accordingly.