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**(1962) 11 KAR CK 0013**  
**In the Karnataka High Court**  
**Case No : Civil Petition No. 352 of 1960**

Basavanneppa Sangappa

APPELLANT

Vs

Rajasaheb Mahammadahnif Saheb and Another

RESPONDENT

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**Date of Decision :** 16-11-1962

**Acts Referred:**

Constitution of India, 1950 — Article 19 (1) (f) 31A, 226, 227  
Mysore Tenants (Temporary Protection from Eviction) Act, 1961 — Section 1 (4), 4

**Citation :** AIR 1964 Kar 43

**Hon'ble Judges :** B.M. Kalagate, J;A.R. Somnath Iyer, J

**Bench :** Division Bench

**Advocate :** H.B. Datar, for the Appellant; V.S. Gunjal, for the Respondent

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## Judgement

Somnath Iyer, J.—A landlord who applied for an order for possession, u/s 29 of the Bombay Tenancy and Agricultural Lands Act on the ground that his tenant had sublet the land leased to him and had committed default in the payment of rent and had therefore incurred liability to be evicted is the petitioner before us. On July 22, 1957 respondent 1 who was the tenant and respondent 2 who was the sub-tenant were issued notices u/s 14 of that Act terminating the tenancy. On November 29, 1959, the Tashildar, having reached the conclusion that the subletting had been proved, and having repelled the contention of the respondents that there was a waiver on the part of the landlord of his right to evict his tenants, gave the landlord the order which he wanted, and that order was confirmed by the Assistant Commissioner in the appeal preferred by the 1st Respondent. But in the revision petition presented by the 1st respondent to the Tribunal, he was able to get the order made in favour of the landlord displaced. The Tribunal came to the conclusion that the termination of the tenancy had been waived by the landlord and that he was not therefore entitled to ask for an order for possession. On the other questions such as whether there was a sub-letting, the findings of the Tribunal were in favour of the landlord. It is this order made by the Tribunal which is challenged in this civil petition presented under Article 227 of the Constitution.

2. On behalf of the respondents, it is urged that the landlord can no longer prosecute this civil petition before this Court since, according to them, the proceedings in this civil petition stand stayed u/s 4 of a temporary legislation called the Mysore Tenants (Temporary Protection from Eviction) Act 1961 which came into force on December 30, 1961. Section 3 of that Act prohibits the eviction of a tenant notwithstanding anything contained in any law, decree or order of a civil or revenue Court or of a Tribunal during the period that temporary Act remains in force. Section 4 statutorily stays all suits and proceedings for the eviction of tenants from lands held by them as tenants. Those two sections read:

3. "Tenants not to be evicted -- Notwithstanding anything contained in any law for the time being in force or in any agreement, decree or order of a civil or revenue Court or of a Tribunal no tenant shall be evicted from the land held by him as a tenant during the period this Act remains in force, whether in execution of a decree or order of a civil or revenue Court or of a Tribunal or otherwise."

4. "Stay of certain suits or proceedings --(1) All suits, proceedings in execution of decrees or orders and other proceedings for the eviction of tenants from the lands held by them as tenants or in which a claim for such eviction is involved pending in any civil or revenue Court or before any Tribunal on the date of commencement of this Act, or which may be instituted on or after the date of such commencement, shall stand stayed during the period this Act remains in force. \* \* \*"

3. It seems to me that the submission made on behalf of the respondents that proceedings in this civil petition stand statutorily stayed u/s 4 of the Mysore Tenants (Temporary Protection From Eviction) Act, 1961 which will be referred to as the temporary legislation cannot be accepted, since in this civil petition the landlord invokes our jurisdiction under Article 227 of the Constitution and it is clear that a proceeding pending before this Court in which that constitutional jurisdiction is invoked is one which cannot be stayed by a law made by the State Legislature." If the Constitution confers jurisdiction on this Court such as what is conferred by Article 226 or 227 of the Constitution, that jurisdiction which transcends the power of the State Legislature, does not yield to a State law regulating its exercise. That being so, it is impossible to accept the contention urged on behalf of the respondents that the proceedings in this civil petition stand statutorily stayed u/s 4 of the temporary legislation.

4. Mr. Datar appearing on behalf of the petitioner contends that if that is the view to be taken of Section 4 of the temporary legislation, there is nothing which can stop us from proceeding to hear this civil petition and decide it according to law. In other words, Mr. Datar asks us to decide in this civil petition whether the order made by the Tribunal dismissing the landlord's application for an order for possession should or should not be quashed. In effect what he asks us to do is to set aside the order made by the Tribunal and to restore the order made by the Tahsildar which was confirmed by the Assistant Commissioner, both of whom made an order for the eviction of the tenant. The question is whether we should

do so.

5. Now, u/s 3 of the temporary Legislation no tenant can be evicted from the land held by him as a tenant during the period the emergency legislation remains in force. This temporary legislation, according to Section 1(4) of that law, had to remain in force till March 31, 1962, But that sub-section conferred power on the State Government to extend the period during which that legislation can remain in force by a notification in the official gazette. It is not disputed that a notification was issued by the State Government in the exercise of that power extending the period during which the temporary legislation has to remain in force, till the 31st day of March 1963. It is thus clear that the temporary legislation will not continue to be in force on and from the 1st day of April 1963.

6. If Section 3 of this temporary enactment is not an unconstitutional provision, then it follows that even if we quash the order of the Tribunal in this case which will have the effect of reviving the orders made by the Tahsildar and the Assistant Commissioner, the landlord will not be able to evict respondents 1 and 2 from the land in their possession until the 1st day of April, 1963.

7. Now it has been explained to us in the counter affidavit which has been produced on behalf of the State by Mr. Government Pleader whom we have heard having regard to the fact that the constitutionality of a State legislation was impeached in this case, that the temporary legislation was made by the State for the purpose of preserving status quo until a new legislation intitled the Land Reforms Act which had since been passed by the legislature and which has received the assent of the President is brought into force. In para 5 of that counter affidavit it has been explained that the primary object of that new law is to prevent the eviction of tenants except on very special grounds such as those specified in that new law and that even on that power of the landlord to evict a tenant fetters are imposed by the new law. We see from Section 23 of the new law that there is a provision in that section under which a tenant may escape from an order for eviction if as specified in that section he pays to the landlord all the arrears of rent due from him and the cost incurred by the landlord in the proceedings in which the eviction is sought.

Although on the question of the interpretation of this section of the new law two competing arguments have been placed before us, it is, I think, not necessary to express any opinion as to which of those two interpretations is the correct interpretation. That is also what we should, in my opinion, say as to the interpretation of Section 142 of the new law which according to the interpretation placed by Mr. Datar, protects orders of eviction made before the new law comes into force from the operation of Section 23 of the Act.

However that may be, as explained in the counter affidavit produced on behalf of the State, the paramount aim of the temporary legislation was that until the new law came into force, tenants who were in occupation of agricultural lands should continue to be in possession of the same so that the benefits which may be

conferred on them by the new law may be available to them. The apprehension of the legislature, according to Mr. Government Pleader, was that those manifold benefits which are proposed to be conferred under the new law on the tenants may be defeated if during the interregnum, orders which, have been made either by Courts or Tribunals are executed and the tenants are dispossessed.

8. Before continuing this discussion, it would be necessary to refer to the many steps which were taken for bringing the new law into force.

On May 10, 1957 a committee was appointed by the State Government to make recommendations in regard to agrarian reforms in the State, and that Committee made its report on September 10, 1957 whereupon the bill in regard to the new law which the Legislature intended to enact was introduced before the Legislature on November 29, 1958. The joint select committee which was appointed to study that measure made its report to the Legislature on March 25, 1961 after holding as many as 64 meetings for that purpose. In September 1961 that bill was passed by the legislative Assembly and on March 5, 1962 the required President's assent was accorded to it. It was during this period that the impugned legislation was enacted on December 31, 1961.

9. Two propositions were advanced before us on behalf of the landlord in this case and also by the learned Advocate supporting that view appearing in the companion matters which have been posted along with this civil petition. The first of them is that Section 3 of the temporary legislation is an unconstitutional provision offending as it does against the provisions of Article 19(1)(f) of the Constitution which creates a fundamental right to acquire and hold property. The argument advanced was that since the landlord in this case had the fundamental right to acquire his property back from the tenant in the event of his committing default in payment of rent or in the event of his contravening the provisions of the Bombay Tenancy and Agricultural Lands Act so as to make him liable for eviction, although on that fundamental right restrictions which have been held to be reasonable restrictions were placed by the Bombay Tenancy and Agricultural Lands Act those are the only restrictions which could be imposed on the exercise of that right, and that the restriction now imposed by Section 3 of the impugned temporary legislation is an extremely unreasonable restriction which could not be imposed by the State by a Law made by it under Clause (5) of Article 19 of the Constitution.

It was said that since u/s 14 of the Bombay Tenancy and Agricultural Lands Act every tenant who sublet his land and who committed default in payment of rent was liable to be evicted, if Section 3 of the temporary enactment brought about a deprivation of that right of the landlord on which a restriction had already been placed, what that section imposed was an unreasonable restriction on the fundamental right guaranteed by Article 19(1) of the Constitution and therefore unconstitutional. It was therefore contended that the petitioner was entitled to evict his tenant under the provisions of the Bombay Tenancy and Agricultural Lands Act, regardless of the unconstitutional provisions of Section 3 of the

temporary enactment.

The second postulate made by Mr. Datar was that even if Section 3 can be regarded as a statutory provision above the reproach of unconstitutionality since even under the provisions of that section what is forbidden is the eviction of the tenant before April 1, 1963, there was no impediment to our deciding this civil petition on its merits so that we may make an order which, if it is in favour of the landlord, may be enforced by him at least after April 1, 1963.

10. It would be convenient in the first instance to deal with the attack made on Section 3 on the ground of unconstitutionality. The first question to be considered in that context would be the endeavour made by Mr. Government Pleader to protect the impugned emergency legislation, under the provisions of Article 31A of the Constitution. It was said that the impugned legislation was a law providing for the extinguishment or modification of a right in an estate as defined by Clause (2) of Article 31A and therefore even if that law took away or abridged any of the rights conferred by Article 19 of the Constitution, it could not be declared void. It is true that under the provisions of Article 31A, a law providing for the extinguishment or modification of a right in an estate as defined by Article 31A(2) is impervious to the attack that it is unconstitutional even if it, abridges or takes away a right conferred by Articles 14, 19 and 31. Now Clause (2) of Article 31A reads:

(2) "in this article:

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala and Janmam right,

(b) the expression "rights"; in relation to an, estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under raiyat or other intermediary and any rights or privileges in respect of land revenue."

Now what Article 31A(1) says is that if a law is made by a State providing for the extinguishment or modification of a right in an estate which falls within the definition referred to above, that law cannot be assailed on the ground of unconstitutionality even if it brings about a deprivation of the rights guaranteed by Articles 14, 19 and 31 of the Constitution. It is thus clear that before the protection of Article 31A could be invoked, two conditions must be established. The first is that the impugned law has reference to an estate as defined in Clause (2) of that Article and the second is that that law provides for the extinguishment or modification of a right in such estate.

Although Mr. Datar contended before us that the land of which the landlord sought possession in this case was not an estate, as defined by Clause (2) of

Article 31A, it appears to me that he is on very slippery foundation when he addressed that argument before us. The stress of the argument advanced before us was that the land belonging to the landlord was originally in the State of Sangli and was in that State until March 8, 1948, when that State merged in the State of Bombay. Although he does not dispute that after that merger, that land which was in the State of Sangli was governed by the provisions of the Bombay Revenue Code, what he contends is that for the purpose of deciding whether that land was or was not an estate as defined by Article 31A(2), we should look, not into the provisions of the Bombay Land Revenue Code which defines an estate, but into the provisions of the Land Revenue Law in the State of Sangli before its merger in the State of Bombay. It is, I think, impossible to accept this contention since the law into which we should look is the Bombay Revenue Code which is the law which was in force on the date on which Article 31A was enacted and not the law which was in force at some anterior point of time which has no relevance to the decision of the question whether the land is or is not an estate within the meaning of that expression occurring in Article 31A. If that is the correct view to be taken, Mr. Datar does not dispute that the land which is the subject-matter of this civil petition is an estate as defined by the Bombay Land Revenue Code, and indeed it was impossible for Mr. Datar to say anything else since if he had made an endeavour to support a contrary view, he would have been met with a pronouncement of the Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, . We must, in my opinion, therefore hold that the first condition requisite for the application of Article 31A undoubtedly exists viz., that the land with which we are concerned in this case is an estate within the meaning of Article 31A.

11. But the more serious question is whether the impugned legislation is a law providing for any extinguishment or modification of any right in that land. Mr. Government Pleader strenuously contended before us that the impugned legislation is one such. But I have no doubt in my mind that it is not. As I understand the provisions of Article 31A(1), the extinguishment or "modification" of a right in an estate which a law should provide for the purpose of acquiring the protection afforded to it by Article 31A(1), should be a permanent extinguishment or modification which brings about a deprivation permanently of a right of the proprietor in the estate. In that view of the matter, the expression modification occurring in Article 31A must be a modification which brings about partial although permanent extinguishment of some right in the proprietor in the bundle of rights vesting in him. That that is the true construction to be placed upon Article 31A is what is clear from *Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another*, in which their Lordships pointed out that the suspension of the enforcement of a right of person in an estate belonging to him is not a law which provides for the extinguishment or the modification of any right in an estate such as what is referred to in Clause (a) of Article 31A(1) of the Constitution. That was a case in which under the provisions of Section 112 of *Ajmer Tenancy and Land Records Act (42 of 1950)*, a landlord habitually

infringing the rights of a tenant under the Act, could be deemed to be a landlord disqualified to manage his own property within the meaning of Section 6 of the Ajmer Government Wards Regulation 1888, thereby making it possible for the Court of Wards to take over his property under its superintendence. The endeavour made on behalf of the Court of Wards to sustain the validity of that law and to seek the protection of Article 31A of the Constitution for that law, met with failure, their Lordships observing on page 375 of the report as follows:

"Section 112 of the Act 42 of 1950 intended to regulate the rights of landlords and tenants, is obviously not a law providing for "the acquisition by the State" of the estates of the landlords, or of any rights in those estates. It is also not a law providing for the extinguishment or modification of any such rights. The learned Attorney-General laid emphasis on the word "modification" used in Article 31A. That word in the context of the Article only means a modification of the proprietary right of a citizen like an extinguishment of that right and cannot include within its ambit a mere suspension of the right of management of estate for a time, definite or indefinite".

Since it is not urged by Mr. Government Pleader in this case that the impugned law provides for the extinguishment of any right in any estate and contends that what it does is to provide for a modification of a right in an estate, it is obvious that his contention cannot succeed since the expression "modification" in Article 31A(1), as pointed out by their Lordships of the Supreme Court, means a modification like an extinguishment. In other words, the modification should be the extinguishment of one of the rights in the estate and so long as such extinguishment is not what is provided for by the impugned legislation in this case which does no more than merely to suspend the right of the landlord to recover possession of his land, from his tenant during a temporary period, it is obvious that the provisions of Article 31A(1) cannot protect the impugned legislation. In the view that I take, it would not be necessary to refer to the decision in Abdul Rahiman Jamaluddin Vs. Vithal Arjun and Others, , on which Mr. Datar placed reliance in support of his proposition that Article 31A has no application to the case before us. It would be enough to refer to a later pronouncement of their Lordships of the Supreme Court in Atma Ram Vs. The State of Punjab and Others, in which it was pointed out that the modification referred to in Article 31-A(1)(a) of the Constitution means the modification of a substantive right of the owner in the estate, reinforcing as it were, the view taken in Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another, that the modification must be a modification like an extinguishment.

In Atma Ram Vs. The State of Punjab and Others, the challenge was to the provisions of the Punjab Security of Land Tenure Act which modified the rights of the proprietor of an estate in three respects. What it firstly did was to modify the proprietor's right to settle his lands on his own terms and to any one he chose. It again modified, if it did not altogether extinguish, his right to cultivate the surplus area as it was called. Thirdly, it modified his right of transfer in his lands

and made it obligatory on his part to sell them at a stated price to specified persons. The view taken by their Lordships of the Supreme Court in that case was that in respect of these three matters, what was done by the law was to provide for a modification of a right in an estate so as to attract the provisions of Article 31-A of the Constitution. Since the impugned law in this case does not provide for any modification of that character, it is obvious that it cannot claim the protection of Article 31-A. In my opinion, the claim made to the protection of that Article must be negated.

12. If the protection of Article 31-A is therefore not available to the impugned legislation, what next arises for consideration is whether that legislation imposes unreasonable restrictions on the exercise of a fundamental right guaranteed by Article 19(1)(f) of the Constitution. While Mr. Datar and the other learned Advocates who intervened in this matter on behalf of the landlords in their own cases, contend that the restrictions imposed by the impugned legislation are extremely unreasonable, Mr. Government Pleader appearing on behalf of the State submits that we cannot but take, the view having regard to the many factors which have to be considered in a case of this description, that the impugned legislation amounts to no more than a perfectly reasonable restriction placed in the exercise of the power of the State under Clause (5) of Article 19 of the Constitution.

The principles by the application of which we should decide whether a restriction placed under that clause of Article 19 is or is not a reasonable restriction, are well known. In *State of Madras Vs. V.G. Row*, those principles were all authoritatively enunciated. What their Lordships in that case did was to point out that in deciding the reasonableness or otherwise of a law which places restrictions on the exercise of a fundamental right, the following factors are those which have to be taken into consideration. The first of them is the nature of the right infringed; the second is the underlying purpose of the restriction imposed; the third is the extent of the evil which was sought to be remedied and the urgency which demanded the remedy of that evil; and the disproportion of the restriction to the object to be achieved and the prevailing conditions. It was also pointed out that what was impossible was the enunciation of any abstract standard or general pattern of reasonableness. This elucidation of the law was what was again made in *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, . It is by the application of these tests and principles that we should decide whether the emergency legislation in this case is what impose unreasonable restrictions on the exercise of the fundamental right.

13. Now the first question to be considered in the context being the nature of the right infringed, it will be seen that that right is the right of a landlord to evict his tenant on any of the many grounds which are enumerated in Section 14 of the Bombay Tenancy and Agricultural Lands Act in this case, or on any other grounds on which such eviction may be sought under other similar laws operating in this State. That right of course is an important and substantial right on the exercise

of which a restriction which may be imposed should be a restriction demanded by legitimate considerations. The question which would next therefore arise would be what are those legitimate considerations demanding the imposition of a restriction on the enforcement of that right. According to the State, what impelled the enactment of the impugned legislation was the desire on the part of the State to protect tenants against eviction by landlords who wished to evict them, until the comprehensive land reforms legislation which was on the anvil was brought into force. As already stated, the land reforms legislation, according to the State, intended to protect in the first instance tenants against eviction even in certain contingencies in which their eviction was possible under the existing laws.

It is also submitted before us that under the new comprehensive law, a landlord who can seek the eviction of his tenant on the grounds which may be available to him under that law, cannot secure possession of the entire land in possession of the tenant but only a reasonable portion thereof. In para 5 of the counter affidavit produced on behalf of the State, this is what is stated :

"The Mysore Land Reforms Bill prohibits the creation or continuation of tenancies or the leasing of land for any period whatsoever except in the case of persons under disability, small holders and serving members of the Armed Forces. It also lays down that land leased to permanent tenants and lands leased to any tenant by a company association or other of individuals, whether incorporated or not, or by religious, charitable or other institution capable of holding property will be non-resemble lands thereby enabling the tenants of those lands to acquire ownership of the lands cultivated by them. Even in the case of lands leased by other persons, such land can be resumed only for personal cultivation, and such resumption is subject to a number of conditions including a condition that the income by the cultivation of the land of which the landlord is entitled to resume should be principal source of income for the maintenance of the landlord. The extent of lands which can be resumed is also restricted in order to ensure that the cultivating tenant is not wholly deprived of the land held by him" Again in paras 6 and 7 of that affidavit, this is what is stated : 6. "Even when the Mysore Land Reforms Bill was discussed in the Legislature, the landlords knew that the Mysore Land Reforms Bill, when enacted would confer large benefits on the tenants and that a substantial proportion of the tenants would become owners of the lands under the Mysore Land Reforms Act."

7. "The State had reason to believe that forestalling the Land Reforms Act being put into force, a large number of landlords would evict or dispossess tenants in order to deprive the tenants of the benefits of the Land Reforms Act and defeat the object of the legislation. Such eviction and dispossession of tenants would work great hardship to tenants who have been depending on agriculture for their livelihood. Such eviction of tenants would also affect agricultural production, as many of the landlords would not themselves be in a position to cultivate the lands."

Finally in para 8 of the counter affidavit, the reason why the emergency legislation was introduced was made clearer in the following way:

8. "the State apprehended that unless the tendency for large scale eviction and dispossession of tenants was checked, the benefit of the Mysore Land Reforms Act would not be available to the actual tillers of land for whose benefit the Mysore Land Reforms Act was mainly enacted."

14. It is surely not necessary, in my opinion, for us to express any opinion on the question whether any of the restrictions imposed by the impugned emergency legislation can be considered as reasonable restrictions within the meaning of Clause (5) of Article 19 of the Constitution imposed in the interests of the general public, if the impugned legislation was a permanent law. On that question, in my opinion, we should say nothing in this case. It would be enough to say that since the impugned legislation was enacted solely for the purpose of preserving status-quo and for the prevention of eviction of tenants who might under the "new law be able to retain possession of lands from which their eviction is sought during the interregnum, the impugned legislation being a purely temporary legislation enacted as an emergency measure so that it might be in operation until a permanent law was enacted, it would be unreasonable for any one to suggest that what that law does is to impose unreasonable restrictions. One of the important elements to be taken into consideration while adjudicating upon the reasonableness or otherwise of the restrictions imposed by an emergency legislation would be the temporary character of that legislation. If in the circumstances explained in the counter affidavit produced on behalf of the State, viz., that pending the enactment of a permanent legislation the Legislature of the State thought it reasonable to preserve status-quo and stop the eviction of tenants on whom the Legislature intended to confer certain benefits not already available to them, I would be loath to say that a law enacted with that objective which does no more than to stop eviction of tenants during a specified period of time which is not unreasonably long, is an unreasonable restriction on a fundamental right guaranteed by Article 19(1)(f). That, that is the view that we should take is what was pointed by their Lordships of the Supreme Court in *Sardar Inder Singh Vs. The State of Rajasthan*, in which a legislation very similar to the legislation now under attack was held to be one which did not impose unreasonable restrictions since it was a purely temporary measure to be in operation until a permanent law was enacted. Now in this case the impugned legislation will cease to have effect on and from April 1, 1963, although in the counter affidavit produced on behalf of the State, the State expresses diffidence as to its ability to bring the new law into operation by any specified date on many grounds including the most recent ground which, according to the State, has come into existence on account of the enemy knocking at doors. Whether any postponement of the bringing into effect of the new law beyond the first day of April 1963 is or is not permissible is not a question on which, in my opinion, we should say anything at this stage. That is a question which should be decided at the appropriate occasion when it actually arises. In my opinion, we should say

that by the enactment of the impugned legislation no unreasonable restrictions were placed on the fundamental right guaranteed by Article 19(1)(f), and that being so, the petitioner cannot succeed in the challenge made to the constitutionality of the impugned emergency legislation.

15. The next question is even if Section 3 of the impugned legislation is as decided a perfectly constitutional provision, and under its provisions no tenant can be evicted by a landlord until April 1, 1963, whether we should nevertheless proceed to hear the civil petition and give the landlord the order for eviction which he seeks. It was said that since section 4 does not and cannot stay the proceedings before this Court under Article 227 of the Constitution and since under the existing temporary Act a landlord can well enforce an order for eviction after April 1, 1963, nothing can prevent us from disposing of this civil petition on its merits, or from making an order in favour of the landlord if we think that he is entitled to the order sought ,by him.

16. It is true that the embargo placed by Section 3 on the right of the landlord to evict his tenant is a temporary embargo banning the eviction of tenants only during the period the temporary legislation is in force. But it is I think impossible for us to speculate as to whether even if we make in favour of the landlord an order for eviction, that order can be enforced by him after April 1, 1963 since it would be difficult for us to predicate what the situation would be after March 31, 1963. In case like this in which the exercise of our jurisdiction under Article 227 is discretionary, we should not, in my opinion, exercise that jurisdiction when any order which we might make in the exercise of that jurisdiction is not going to be of any immediate benefit to the person in whose favour we might make that order. That is, in my opinion, what we should say even if the enforcement of any order that we might make is not possible only during a temporary period. If the law which the State Legislature has made within its own legislative field forbids the eviction of a tenant for however temporary a period, it would, I think, be futile for any landlord during that period to ask us to make an order for that eviction which is temporarily banned by legislation. To take an order for eviction in that situation would be to authorise something which a landlord is forbidden from doing so, and it is clear that our jurisdiction should not be exercised in that way.

17. No other contention was urged on behalf of the petitioner.

18. That being so, the only order that we should make in this civil petition should be the order that we have all along been making. In my opinion, we should say that this civil petition should stand dismissed for the time being. II and when there will be no difficulty in the way of the landlord enforcing the order for eviction which he may obtain in his favour by reason of the temporary legislation spending itself or by reason of other circumstances which might make that enforcement possible, the petitioner in this case will have the liberty to apply for the revival of this civil petition after" service of notice on the Advocate or Advocates, for the opposite side. In the meanwhile, whoever is in possession of

the land will continue to be in such possession.

19. There will be no order as to costs.

Kalagate, J.

20. I agree.

21. Order accordingly.