

(1980) 11 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 397 of 1980

Chandra and Co.	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 12-11-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation (Amendment) Act, 1859 — Section 15, 17
Rajasthan Land Revenue Act, 1956 — Section 91
Specific Relief Act, 1877 — Section 9
Specific Relief Act, 1963 — Section 6, 6(2)

Citation : AIR 1981 Raj 217 : (1981) RLW 19

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Advocate : M.C. Bhandari and K.N. Joshi, for the Appellant; Rajesh Balia, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—The Cinema house known as "Shri Ganga Theatre" (hereinafter referred to as "the Cinema Theatre"), situated in the city of Bikaner, belongs to the State of Rajasthan. The cinema theatre was given on lease for a period of five years to M/s. Balabux Anand Raj, a partnership firm, from 1st August, 1958. During the pendency of the said lease, the firm M/s. Balabux Anandraj was dissolved on 12th June, 1961 and thereafter, the lease was continued in the name of Shri Anandraj on the same terms. The case of the petitioner is that in the year 1962, Shri Anandraj sub-leased the cinema theatre to the petitioner and since then the petitioner has been in possession of the cinema theatre. The lease of Shri Anandraj was extended by a period of one year from August 1, 1963 on the same terms and conditions. The extension was given in the name of M/s. Anandraj and Company, whose sole-proprietor was Shri Anandraj. After the expiry of the period of the lease, proceedings were initiated by the Collector, Bikaner, under the provisions of the Rajasthan Public Premises (Eviction of

Unauthorised Occupants) Act, 1964 (hereinafter referred to as "the Act"), against M/s. Anandraj & Co., and in the said proceedings the Estate Officer passed an order dated 27th August, 1968 for eviction of M/s. Anandraj and Co., from the cinema theatre. The aforesaid order passed by the Estate Officer was affirmed, in appeal by the District Judge, Bikaner. Two writ petitions (S. B. Civil Writ Petition No. 520/70 and S. B. Civil Writ Petition No. 99/70) were filed in this Court wherein the aforesaid orders passed by the Estate Officer and the District Judge were challenged. S. B. Civil Writ Petition No. 520/1970 was filed by M/s. Anandraj & Co., whereas S. B. Civil Writ Petition No. 99/70 was filed by the petitioner. The aforesaid writ petitions were disposed of by a learned single Judge of this Court (M. L. Joshi, J.) by order dated 18th July, 1974, whereby the writ petition filed by M/s. Anandraj & Co., was accepted and the order dated 28th August, 1968 passed by the Estate Officer as well as the order dated 5th August, 1970 passed by the District Judge Bikaner were quashed and the non-petitioners in the said writ petitions were directed not to take any proceedings for eviction of M/s. Anandraj & Co., in pursuance of the impugned orders. In the order aforesaid, this Court has observed that although the lease was up to 31st July, 1964, in the first instance, but in view of the acceptance of the rent up to September, 1970, by the State, the status of M/s. Anandraj & Co., was that of a tenant by virtue of the principle of holding over as envisaged u/s 116 of the Transfer of Property Act and that M/s. Anandraj and Co., could not be regarded as unauthorised occupant on the date of the passing of the impugned orders. This Court, however, observed that it would be open to the State to take appropriate proceedings after terminating the lease of M/s. Anandraj & Co. After the aforesaid decision of this Court, the State Government served a notice in the year 1975 on M/s. Anand Raj & Company whereby the tenancy in favour of M/s. Anandraj & Company was terminated. Another notice dated 26th November, 1976, for the termination of the tenancy, was given to M/s. Anandraj and Company and the heirs of Shri Anandraj (deceased), as well as to the petitioner firm and also to the Manager of the cinema theatre. By the aforesaid notice also these persons were informed that the tenancy should be deemed to have been terminated with effect from 31st January, 1977 and they were asked to deliver possession of the cinema theatre. Thereafter an application was submitted on behalf of the State Government before the Estate Officer under the provisions of the Act on 29th June, 1979. M/s. Anandraj & Company and the heirs of Shri Anandraj (deceased), the petitioner firm and the Manager of this cinema theatre were impleaded as opposite parties in the said application. In the said application, it was submitted that the cinema theatre is a public premises under the Act and that the opposite parties to the said application were in unauthorised occupation of the said premises and it was prayed that the opposite parties may be evicted from the cinema theatre and the possession of the premises, including fittings, machines, furniture etc., should be delivered to the applicant. On the said application, the Estate Officer issued a notice dated 29th November, 1979 to the opposite parties, including the petitioner, whereby they were required to appear before him personally or through their authorised representative on 15th

February, 1980 and to submit their objections against the application submitted on behalf of the State Government for their eviction from cinema theatre.

2. The case of the petitioner is that before the petitioner could appear before the Estate Officer on 15th February, 1980, in the proceedings under the Act, the possession of the cinema theatre was taken over forcibly by respondents Nos. 2, 4 and 5 on 30th Jan., 1980 at about 3.30 p. m. Being aggrieved by the aforesaid action of the respondents Nos. 2, 4 and 5 in taking forcible possession of the cinema theatre the petitioner has filed this writ petition. In the writ petition aforesaid, the petitioner has submitted that the petitioner was in lawful occupation of the cinema theatre and that the action of respondents Nos. 2, 4 and 5 in dispossessing the petitioner from the cinema theatre was without the authority of any law and was wholly illegal, unjust and void.

3. The writ petition has been contested by the respondents and in the reply that has been filed on behalf of the respondents, it has been pleaded that after the expiry of the lease on 1st August, 1964, Shri Anandraj and his successors as well as the petitioner owed a duty to return the premises of the cinema theatre to the State Government and that they were under an obligation to peacefully hand over the possession of the same and that they were continuing in unauthorised occupation of the same for about 15 years. In the said reply, it has been denied that respondent No. 2 (the Collector, Bikaner) has gone to the spot or that any police force had been sent and it has been asserted that the possession of the property was demanded, delivered and taken over in a peaceful manner after preparing a panchnama at the spot. In the said reply, it is further asserted that the petitioner was a rank trespasser over the property and the petitioner has no legal right to remain in the cinema theatre. In the reply, it is also stated that the Collector, Bikaner had the authority to ask the petitioner, or its agent, to deliver possession and when the possession was delivered and taken over peacefully there was nothing illegal in it. In the reply, it has also been asserted that the petitioner has no right to invoke the jurisdiction of this Court under Article 226 of the Constitution.

4. A rejoinder has been filed by the petitioner wherein it has been denied that the possession of the cinema theatre was handed over voluntarily by Shankerlal. It has been submitted that in spite of all protests by Shankerlal the possession of the cinema theatre was taken over by respondents Nos. 2, 4 and 5. In the said rejoinder, it has also been stated that Shankerlal who was merely an Accounts Clerk of the petitioner had no authority to deliver the possession of the cinema theatre.

5. Mr. M. C. Bhandari, the learned counsel for the petitioner, has submitted that the officers of the State Government have acted in a very highhanded and arbitrary manner in forcibly taking over the possession of the cinema theatre, which was in possession of the petitioner and that since the aforesaid action of the respondents in taking possession of the cinema theatre is not supported by the authority of any law, the petitioner is entitled to be restored to the

possession of the said property of which he was deprived illegally and without authority of law. In support of his aforesaid submission Shri Bhandari has placed reliance on the decision of this Court in Karam Singh and Others Vs. The State of Rajasthan and Others,

6. The learned Deputy Government Advocate, on the other hand, has submitted that the petitioner has no locus standi to maintain this writ petition inasmuch as the petitioner had no right to continue in possession of the cinema theatre after the lease had been determined by notices issued in the years 1975 and 1976. The submission of the learned Deputy Government Advocate was that after the termination of the lease of M/s. Anandraj & Co., the petitioner, who does not claim any independent right in the property, came to an end and, therefore, the petitioner cannot maintain this writ petition. The learned Deputy Government Advocate has also submitted that the possession of the cinema theatre had not been taken forcibly but was delivered voluntarily by the representative of the petitioner and, therefore, it is not open to the petitioner to challenge the action of the respondents in taking over the possession of the cinema theatre.

7. In view of the aforesaid submissions by the learned counsel for the parties, the first question which requires determination is whether the possession of the cinema theatre had been taken over forcibly without the consent of the petitioner or its representative on 30th January, 1980 as alleged by the petitioner or it was taken with the consent of the representative of the petitioner without use or show of force as has been asserted by the respondents. In my opinion, the case of the petitioner that it was forcibly dispossessed from the cinema theatre appears to be more probable in the facts and circumstances of the present case. In this context it may be observed that disputes have been going on between the petitioner and the State Government with regard to handing over of possession of the cinema theatre for a number of years in the past and the petitioner had also filed a writ petition in this Court against the proceedings which had been initiated earlier under the provisions of the Act for the eviction of the petitioner from the cinema theatre. Even after the notices which were given in 1975 and 1976 for termination of the lease of Shri Anandraj, the petitioner did not hand over the possession of the cinema theatre as demanded by the said notices but continued in possession of the same with the result that proceedings were initiated by the State Government before the Estate Officer for the eviction of the petitioner under the provisions of the Act. In the said proceedings notice was issued by the Estate Officer on 29th November, 1979 requiring the petitioner to appear before him on 15th Feb., 1980. It appears highly unlikely that in the face of these proceedings the petitioner would have voluntarily surrendered the possession of the cinema theatre. The case of the petitioner that it was forcibly dispossessed from the cinema theatre finds support from contemporaneous documents, viz., the telegrams which were sent by the petitioner on 31st Jan., 1980, to the Collector and District Magistrate, Bikaner, as well as Chief Minister of Rajasthan wherein the petitioner has protested against the action of respondents Nos. 2, 4 and 5 in taking forcible possession of the cinema theatre.

The only document on the basis of which the respondents have asserted that the possession had been voluntarily surrendered by the representative of the petitioner is the "panchanama" which was prepared at the time of taking over of the possession of the cinema theatre on 30th Jan., 1980. A copy of the said "panchnama" has been filed as Ex. R-2 with the reply filed on behalf of the respondents. A perusal of the said "panchnama" shows that the possession of the cinema theatre was taken in pursuance of the order of the Collector, Bikaner. The order of the Collector has not been placed on the record. Nor has the Collector chosen to file any affidavit placing on record the circumstances in which he passed the order for taking over the possession of the cinema theatre. The mere fact that the "panchanama" bears the signatures of Shankerlal, the representative of the petitioner, cannot lead to the inference that Shankerlal had voluntarily surrendered the possession of the cinema theatre. The fact that Shankerlal had not voluntarily surrendered the possession of the cinema theatre is borne out by the telegram which was sent by him on 30th Jan., 1980 to the Manager of the petitioner firm at Jaipur, wherein he had informed that respondents Nos. 4 and 5 were taking over charge of the cinema forcibly. Taking into consideration the facts and circumstances referred to above, I am of the opinion that the case of the respondents that the possession of the cinema theatre had been voluntarily surrendered by the representative of the petitioner cannot be accepted and it must be held that the petitioner was dispossessed from the cinema theatre without its consent by respondents Nos. 4 and 5 on 30th January, 1980.

8. The next question which arises for consideration is whether the petitioner is entitled to seek any relief from this Court under Article 226 of the Constitution against the aforesaid action of respondents Nos. 4 and 5. It has already been noticed that the grievance of the petitioner is that the cinema theatre had been in peaceful possession of the petitioner since 1962 and the petitioner has been deprived of the possession of the cinema theatre arbitrarily and without the authority of law by respondents Nos. 4 and 5 who are the officers of the State Government.

9. Before dealing with the submissions urged by the learned Deputy Government Advocate it would be pertinent to take note of the celebrated dictum of Lord Atkin in *Eshugbayi Eleko v. Govt. of Nigeria* 1931 AC 662: AIR 1931 PC 248. In the said, case, Lord Atkin has observed as under:

"The Governor acting under the Ordinance acts solely under executive powers, and in no sense as a Court, As the executive he can only act in pursuance of the powers given to him by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice. And it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive."

10. The principle of jurisprudence referred to by Lord Atkin in the above

observations, is also a part of the jurisprudence of this country. In *T. Cajee Vs. U. Jormanik Siem and Another*, the Supreme Court has laid down the same principle and has observed that "where executive power impinges upon the rights of citizens it will be backed by appropriate law".

11. Cases have come up before the Supreme Court in which a person in possession of movable or immovable property has been deprived of the possession of the same by the State or its officers without the authority of law and the jurisdiction of the High Court under Article 226 of the Constitution or the Supreme Court under Article 32 of the Constitution has been invoked and it has been held that the citizen who has been wrongfully deprived of the possession of property by the State is entitled to be restored back the possession of the said property.

12. In *Wazir Chand Vs. The State of Himachal Pradesh*, the Supreme Court was dealing with a case involving seizure of 261 bags of medicinal herbs by Jammu police from the possession of the appellants before the Supreme Court. The said seizure was challenged by the appellants in a writ petition filed under Article 226 of the Constitution before the Judicial Commissioner of the State of Himachal Pradesh. The said writ petition was dismissed by the Judicial Commissioner on the ground that it was not possible to hold that the appellants had a right, title or interest in the goods seized and had the right to claim the relief prayed for by him, The Supreme Court, in appeal, reversed the decision of the Judicial Commissioner and held that the seizure of the property was illegal. The Supreme Court accepted "well founded", the following contention urged on behalf of the appellants (at p. 416) :

"It was argued that the goods having been seized from the actual possession of the petitioner or his servants, the Chamba concern, being under the exclusive control of Trilok Nath or Wazir Chand, the determination of the question whether Wazir Chand had obtained possession fraudulently was not relevant to this inquiry, and that the only point that needed consideration was whether the seizures were under authority of law or otherwise, and if they were not supported under any provision of law, a writ of mandamus should have issued directing the restoration of the goods so seized."

The Supreme Court negated the contention urged on behalf of the State that the appellants had no legal title in the goods that were seized and, therefore, no relief could be granted to the appellants with the following observations:

"Assuming that that was so, goods in the possession of a person who is not lawfully in possession of them cannot be seized except under authority of law, and in absence of such authority, Wazir Chand could not be deprived of them".

12-A. In the said case, the Supreme Court has further observed (at p. 417):

"It is obvious that the procedure adopted by the Kashmir and the Chamba Police was in utter violation of the provisions of law and could not be defended under

cover of any legal authority. That being so, the seizure of these goods from the possession of the petitioner or his servants amounted to an infringement of his fundamental rights, both under Article 19 and Article 31 of the Constitution and relief should have been granted to him under Article 226 of the Constitution."

13. A similar question with regard to wrongful seizure of property came up before the Supreme Court in *Bishan Das and Others Vs. The State of Punjab and Others*, In the said case a Dharamshala, temple and shops had been built in 1909 on land belonging to the Government and the same were in possession of the petitioners before the Supreme Court. In 1956 some of the officials of the State of Punjab and the Municipal Committee Barnala took forcible possession of the said Dharamshala, temple and the shops and thereupon the petitioners moved a writ petition in the Supreme Court under Article 32 of the Constitution wherein it was contended that the order in pursuance of which the acts of dispossession had been committed as well as the acts themselves constituted flagrant infringement by the State and its officials of the fundamental right of the petitioners guaranteed under Articles 14, 19 and 31 of the Constitution. The said writ petition was opposed by the State as well as by the Municipal Council on the ground that the land on which Dharmshala had been built belongs to the State and the State was entitled to eject the petitioners. The Supreme Court allowed the writ petition and issued a writ restraining the State and the Municipal Council from interfering with the petitioners in the management of the Dharmshala, temple and shops. The Supreme Court rejected the argument raised on behalf of the State that the petitioners were not entitled to seek relief as they were trespassers and has deserved as under (at pp. 1574-75):--

"It is enough to say that they are bona fide in possession of the constructions in question and would not be removed except under authority of law. The respondents dearly violated their fundamental rights by depriving them of possession of the Dharamshala by executive orders. Those orders must be quashed and the respondents must now be restrained from interfering with the petitioners in the management of the Dharamshala, temple and shops," In the said case, the Supreme Court has further observed as under (at p. 1575):

"In these circumstances, the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements 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 peaceful possession of the property."

14. The aforesaid decision in *Bishan Das v. State of Punjab* (supra) shows that a person who is in bona fide possession of property can be dispossessed of the same only in accordance with law and in law, he is dispossessed from the same by the State or its officers without the authority of law the said action of the State and its officers would involve violation of his fundamental rights.

15. In *Mohanlal v. State of Punjab* 1970 Rent CJ 95 (SC) , the appellants before the Supreme Court had taken on lease from the Gram Panchayat a portion of the village common land for a period of five years from February, 1956 to February, 1961. After the expiry of the said lease the Gram Panchayat moved the Collector u/s 4 of the Punjab Public Premises and Land (Eviction and Land Recovery) Act, 1959 for the eviction of the appellants on the ground that after the expiry of the lease they were in possession of the demised property unauthorisedly. The Collector ordered the eviction of the appellants on the said application and the said order was affirmed in appeal by the Commissioner. The appellants thereafter moved a petition in the High Court under Articles 226 and 227 of the Constitution, wherein they challenged the validity of the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, on the ground that it was violative of the provisions of Article 14 of the Constitution of India. The said writ petition of the appellant was dismissed by the High Court and thereafter they filed an appeal before the Supreme Court. During the pendency of the appeal before the Supreme Court the aforesaid Act had been declared as unconstitutional by the Supreme Court in its decision in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, and in view of the aforesaid decision the appellants submitted before the Supreme Court that their eviction was illegal. On behalf of the Gram Panchayat it was submitted before the Supreme Court that the appellants were in unauthorised occupation of the land and that they were not entitled to invoke the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The aforesaid submission urged on behalf of the Gram Panchayat was rejected by the Supreme Court with the following observations:

"Mr. Keshwani, learned counsel for the Gram Panchayat contended that as the High Court has come to the conclusion that the appellants are in unauthorised occupation of the suit properties, they are not entitled to invoke the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This contention has no merit. Under our jurisprudence even an unauthorised occupant can be evicted only in the manner authorised by law, this is the essence of the rule of law."

16. To the same effect are the decisions of this Court. In *Karam Singh and Others Vs. The State of Rajasthan and Others*, the petitioners before this Court were persons who had migrated to India from Pakistan and who had put their stalls over a plot of land. The said plot of land was claimed by various authorities viz., State Government, the Municipal Council, Kota and the Western Railway. Proceedings for the eviction of the petitioner from the said land had been initiated by the Superintendent, Western Railway under the Public Premises Eviction of Unauthorised Occupants Act, 1958. Proceedings for the eviction of the petitioners were also initiated by the Secretary, Mandi Committee u/s 22 of the Rajasthan Colonisation Act. During the pendency of the aforesaid proceedings the petitioners were ejected forcibly from the land by the City Magistrate, Kota, the Additional Superintendent of Police, Kota the Tahsildar (Colonisation), Kota,

Secretary, Mandi Committee, Kota and the Superintending Engineer, P. W. D., Kota, by resorting to police force. Feeling aggrieved by the aforesaid action of the aforesaid officers of the Government, the petitioners moved a writ petition in this Court under Article 226 of the Constitution. This Court (Tyagi J., as he then was), while allowing the said writ petition, directed that the status quo ante at the time when the ejectment had taken place should be restored and the parties be left to take recourse to the Court of law to get their rights established. In the said case, this Court has observed (at p. 267 of AIR):--

"I need not go into the matter of title or right of the petitioner on this land. Even if the petitioner had no right to retain the possession of the land, was it open to the State authorities to remove him in the manner it was done? If the State authorities were of the opinion that the petitioner and his colleagues were trespassers on this land they could take action against him and his colleagues in the manner which was allowed by the law and not by using the police power of the State."

"In this age of rule of law such high handed action on the part of the Government officials can never be thought of. It is very difficult for the respondents to justify the action taken by them It is a clear case of high handed action on the part of the Government officials which may be deprecated by all law abiding citizens."

17. In the said case, this Court has relied upon the decision of the Punjab High Court in *State of Pepsu v. Mohinder Singh*, AIR 1958 Punj 325, wherein it has been laid down that there is no principle of law which empowers a State Government by force or show of force to evict a person who is in actual possession of immovable property and that if the State Government was of opinion that the State had the superior title or the better right to possession, it is open to them to bring an appropriate action against him and to secure his eviction in accordance with the provisions of law.

18. The principles laid down in *Karam Singh and Others Vs. The State of Rajasthan and Others*, were reiterated in the recent decision of this Court in *Janaki Nath v. State of Rajasthan*, (Civ. Writ Petn. No. 435/1971 decided on 5-8-1980).

19. The decisions referred to above lead to the conclusion that a person who is in peaceful possession of property cannot be deprived of the possession of the same by the State, or its officers, except in accordance with law and in a case, where the State or its officers have dispossessed such a person of the property in his possession without any authority of law it would be open to him to seek redress against the aforesaid unlawful action of the State and its officers by invoking the jurisdiction of this Court under Article 226 of the Constitution. The aforesaid decisions further show that a person who has been dispossessed of the property in his possession by the State or its officers, without the authority of law, cannot be non-suited on the ground that he was an unauthorised occupant

of the said property and had no right or title in the same.

20. The learned Deputy Government Advocate has submitted that a distinction must be drawn between eviction by the State of an unauthorised occupant from property owned by the State and the eviction of an unauthorised occupant from any other property. The submission of the learned Deputy Government Advocate was that in so far as property belonging to the State is concerned, it is open to the State to take possession of the said property by evicting the person in unauthorised occupation of the same and the person so evicted cannot invoke the jurisdiction of this Court under Article 226 of the Constitution against such an eviction. The learned Deputy Government Advocate has further submitted that a lessee who continues in occupation of the property belonging to the State after the termination of the lease, is an unauthorised occupant and can be dispossessed by the State or its officers and the lessee is not entitled to seek relief under Article 226 of the Constitution.

21. In my opinion, the said contention of the teamed Deputy Government cannot be accepted. In the matter of dispossession of a person in possession of immovable property, the law in India differs from the English, law in the sense that while English law permits a person who is actually entitled to the possession of immovable property and is out of possession to enter without breach of peace if he can, the Indian law does not permit a person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. Section 6 of the Specific Relief Act 1963 (Section 9 of the Specific Relief Act, 1877) empowers a person who has been dispossessed without his consent of immovable property, otherwise than in due course of law, to secure possession thereof, notwithstanding any other title that may be set up, by filing a suit within a period of six months from the date of dispossession. The object of the aforesaid provision is to discourage people from taking the law into their own hands, however, good their title, and to provide a summary and speedy remedy through the medium of the Civil Court for restoration of possession to party dispossessed by another, leaving the parties to fight out the question of their respective titles in a regular suit.

22. In *Midnapur Zemindari Co. Ltd. v. Naresh Narayan Roy* AIR 1924 PC 144 the Privy Council has observed :

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

23. In *K.K. Verma and Another Vs. Union of India and Another*, Chagla, C. J., has pointed out the difference between the law in India and the law in England, and has observed (at p. 360):

"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. u/s 9 of the Specific Relief Act a tenant who

has ceased to be tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law"

24. In *Yar Muhammad and Another Vs. Lakshmi Das and Others*, a Full Bench of the Allahabad High Court has laid down :

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. No person can be allowed to become a judge in his own cause."

25. The aforesaid observations in the cases referred to above have been quoted with approval by the Supreme Court in *Yashwant Singh v. Jagdish Singh*, AIR 1968 SC 620 wherein the Supreme Court while dealing with Section 326 of the *Qanoon Mal Riyasat Gwalior* (which was similar to Section 9 of the Specific Relief Act, 1877) has observed, (at p. 623):

"In our opinion the law on this point has been correctly stated by the Privy Council, by Chagla, C.J., and by the Full Bench of the Allahabad High Court in the cases cited above."

26. In the said case, the Supreme Court has disapproved the decision of the Calcutta High Court in *State of West Bengal Vs. Birendra Nath Basunia and Others*, wherein the High Court had refused to issue an order under Article 226 of the Constitution prohibiting the Government from forcibly taking possession of lands which had been validly resumed by Government and has observed :

"We do not agree with the conclusion of the High Court that a lessor is entitled in India to use force to throw out his lessee."

27. The aforesaid decisions show that the law affords protection to a person in judicial possession of property and if such a person is dispossessed of the said property otherwise than in due course of law, he can enforce his right to be restored to possession and the said right is available against a person claiming superior title in the property. The possession of a tenant who continues in possession after the termination of the tenancy is juridical possession as it is protected by Section 6 of the Specific Relief Act, 1963.

28. Does the State, as owner of property, enjoy higher rights than the citizen in the matter of taking possession of its property ? The learned Deputy Government Advocate would like this question to be answered in the affirmative. In support of his submission that the State enjoys higher rights than the citizen, the learned Deputy Government Advocate has pointed out that under Sub-section (2) of Section 6 of the Specific Relief Act, 1963, the Government has been expressly excluded from the ambit of the aforesaid provision and has submitted that the remedy of a suit u/s 6 of the Specific Relief Act, 1963 has been expressly denied in cases where the person has been dispossessed from immovable property otherwise than in due course of law by the Government. In my view, the exclusion of the remedy provided u/s 6 of the Specific Relief Act, 1963, as

against the Government, cannot lead to the inference that the State is free to act in an arbitrary manner by taking the law in its own hands by forcibly dispossessing a person in possession of property without having recourse to the process of law. In this context, it may be noted that Section 6 of the Specific Relief Act, 1963 corresponds to Section 9 of the Specific Relief Act, 1877 and Section 9 of the 1877 Act was based on Section 15 of the Limitation Act of 1859. By Section 17 of the Limitation Act of 1859, any "public property or right" had been expressly kept outside the scope of the Limitation Act of 1859 and, therefore, they were also kept outside the scope of Section 9 of the Specific Relief Act, 1877. The exemption of the Government from the operation of Section 91 of the Specific Relief Act, 1877 as well as Section 6 of the Specific Relief Act, 1963, thus appears to be based purely on historical reasons. To construe the provisions contained in Section 6 of the Specific Relief Act, 1963, as an authority for arbitrary action by the State or its officers would be destructive of the basic principle of the rule of law on which the Constitution is founded. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the Supreme Court has emphasised that Article 14 of the Constitution strikes at arbitrariness in State action whether it be under authority of law or in exercise of executive power without making of law. The non-availability of the remedy u/s 6 of the Specific Relief Act, 1963, cannot, therefore, mean that the State is free to act in a manner as to dispossess a person in juridical possession of property otherwise than in due course of law.

19. In this context, it may be pointed out that adequate provisions have been made by the legislature whereby special procedure had been prescribed for eviction of persons in unauthorised occupation of Government properties. In this regard, reference may be made to Section 91 of the Rajasthan Land Revenue Act, 1956 which empowers the Tehsildar to summarily evict a person who occupies or continues to occupy any agricultural land without lawful authority but lays down that before taking proceedings for eviction, the Tehsildar shall cause to be served in the prescribed manner on the person reported to be occupying or continuing to occupy land without lawful authority, a notice specifying such land and calling on him by certain date either to vacate such land or to appear and show cause why he should not be so evicted therefrom. Similarly, with regard to urban properties belonging to the Government, provision has been made in the Act for eviction of unauthorised occupants after issuing a notice to the person in unauthorised occupation. In the face of the aforesaid provisions, it cannot be said that it would be open to the State, or its officials, to take forcible possession of GOVERNMENT property in unauthorised occupation of a person without following the procedure laid down in the aforesaid enactments. To permit them to do so would result in the said provisions being reduced to a dead letter. It would also enable the State to follow the procedure laid down in the said enactments as against one unauthorised occupant and not to follow it as against another unauthorised occupant at its sweetwill. Such a course would be impermissible. Hence, in view of the express provisions contained in Section 91 of the Rajasthan

Land Revenue Act, 1956 as well as the provisions contained in the Act, it would not be open to the State Government or its officers to evict an unauthorised occupant from Government property except in accordance with the procedure laid down in the said provisions and a person who has been evicted from property in his possession otherwise than in accordance with the said provisions would be entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution,

30. In support of his submission that the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution, the learned Deputy Government Advocate has placed strong reliance on the decision of the Supreme Court in *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, In the said case, certain ex-Zamindars who had been granted certain lands were being evicted by the State on the ground that their grants had been resumed and the said Zamindars had filed petitions before the High Court under Article 226 of the Constitution of India, wherein it was prayed that a writ or other appropriate order or direction be issued restraining the State from taking action as threatened by the notices issued by it. The Orissa High Court had allowed the said writ petitions on the view that the said Zamindars were entitled to an appropriate writ under Article 226 of the Constitution. The Supreme Court, on appeal, reversed the said decision of the Orissa High Court on the view that ex-Zamindars, who had filed the writ petitions in the High Court, had no light on basis of which a writ could be issued in their favour under Article 226 of the Constitution. In the said case a contention was urged on behalf of the ex-Zamindars that the right on which the writ petition was founded was a right flowing from the continuous possession of the properties for many years. The Supreme Court negatived the said contention with the following observations (at p. 689):--

"Mere possession of the property for however long a period it may be, will not clothe the possessor with any legal right if it is shown that the possession is under a grant from the State which is returnable. Such long possession may give him a legal right to protect his possession against third parties, but as between the State and the grantee, possession of the grantee under a resumable grant cannot be said to confer any right on the grantee which would justify a claim for a writ under Article 226 where the grant has been resumed"

31. The learned Deputy Government Advocate has laid great emphasis on the aforesaid observations of the Supreme Court and has submitted that in view of the aforesaid observations, a person in unauthorised occupation of Government property cannot approach the Court under Article 226 of the Constitution if he is dispossessed from the said property without the authority of law. In my opinion, the observations of the Supreme Court referred to above have to be read in the light of the other observations contained in the said judgment wherein the Supreme Court, while dealing with the cases wherein a person in possession had been dispossessed by executive action without authority of law, and relief had

been granted by the Courts under Article 226 of the Constitution, has observed that they "did not wish to examine the question which these decisions have considered." The aforesaid observations "show, that the Supreme Court was drawing a distinction between a case where the Government is seeking to evict a person in unauthorised occupation of Government property and the unauthorised occupant approaches the Court for relief against the said eviction and a case where State Government or its officers have forcibly evicted an unauthorised occupant from Government property without the authority of law. As regards eviction by the State or its officers, of an unauthorised occupant from Government property without the authority of law, the aforesaid judgment of the Supreme Court in the State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, does not detract from the law laid down by the Supreme Court in Wazir Chand Vs. The State of Himachal Pradesh, and Bishan Das and Others Vs. The State of Punjab and Others, in Yashwant Singh v. Jagdish Singh AIR 1968 SC 620 (supra) and Mohanlal v. State of Punjab 1970 Rent CJ 95 (SC) (supra), which were decided after the decision in State of Orissa v. Ram Chandra Deo (supra) the Supreme Court has reiterated the principle that the State or its officers, cannot forcibly dispossess an unauthorised occupant from Government property. In view of the aforesaid decisions it must be held that in a case where the State, or its officers, have taken the law in their own hands by forcibly ejecting a person from Government property without following the procedure laid down by law, the principle on the basis of which the Court gives relief is that laid down by Supreme Court in Bishan Das v. State of Punjab (supra) viz., that a Government, functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of the property, cannot be permitted to take law into their own hands and dispossess a person by display of force in callous disregard of the normal requirements of the rule of law.

32. Now coming to the facts of the present case, I find that the cinema theatre was originally given on lease, for a period of five years, to M/s. Balabux Anand Raj from 1st August, 1958. During the subsistence of the said lease the aforesaid partnership firm was dissolved in 1961 and thereafter the lease was continued in the name of M/s. Anandraj and Company. The said lease of M/s. Anandraj and Company was extended by a period of one year till 1st August, 1964. From the judgment of Justice Joshi, dated July 18, 1974 in S. B. Writ Petition No. 520/1970 and 99/70, it appears that State had received the rent for the premises up to September, 1970 and, therefore, after the expiry of the term of the lease, the lessee, M/s. Anand Raj and Company continued in possession of the cinema theatre as a tenant holding over as envisaged u/s 116 of the Transfer of Property Act. The said lease of M/s. Anandraj and Company was terminated by the State by notice dated 26th Nov., 1976 and thereafter proceedings were initiated under the provisions of the Act before the Estate Officer. The petitioner claims to be a sub-lessee under M/s. Anand Raj & Company and in the writ petition it has been asserted that it has been in possession of the cinema theatre

since July, 1962. The petitioner had filed S. B. Civ. Writ Petn. No. 199/1970 in this Court challenging the orders passed by the Estate Officer and the District Judge, Bikaner in the proceedings that were earlier initiated by the State under the provisions of the Act and in the said writ petition the petitioner had asserted that the petitioner was in possession of the cinema theatre as a sub-lessee of M/s. Anand Raj & Company and had been paying the rent to the Public Works Department of the Government of Rajasthan. Since this Court was quashing the impugned orders passed by the Estate Officer and the District Judge, Bikaner, in the writ petition filed by M/s. Anand Raj & Company, it was not considered necessary to deal with the writ petition of the petitioner. But the notice dated 26th Nov., 1976, which was given by the State after the judgment of this Court in the abovementioned writ petitions, for the termination of the lease, was also given to the petitioner and the petitioner has also been impleaded as party in the proceedings that have been initiated by the State under the provisions of the Act and which are pending before the Estate Officer. During the pendency of the said proceedings before the Estate Officer, respondents Nos. 4 and 5 took over the possession of the cinema theatre on 30th Jan., 1980 from Shankerlal, an employee of the petitioner.

33. From the aforesaid facts and circumstances, it is established that the petitioner, had been in possession of the cinema theatre since long and during the pendency of the proceedings for eviction of the petitioner initiated under the provisions of the Act, the petitioner was dispossessed from the cinema theatre without authority of law by respondents Nos. 4 and 5. It cannot be said that the petitioner was a rank trespasser. The petitioner is, therefore, entitled to seek relief under Article 226 of the Constitution against the aforesaid arbitrary and illegal interference with its right to remain in occupation of the cinema theatre till evicted therefrom, in accordance with law and the petitioner is entitled to be restored to the same position in which it stood prior to aforesaid illegal action of respondents Nos. 4 and 5 in dispossessing the petitioner from the cinema theatre otherwise than in due course of law.

34. In the result, the writ petition is allowed and the respondents are directed to restore back to the petitioner the possession of Shri Ganja Theatre, Bikaner along with the machines, furnitures fixtures etc., which were taken possession of by them on 30th January, 1980. The petitioner would be entitled to his costs in this petition. Hearing fee is fixed at Rs. 500/-.