
(1967) 03 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition No's. 1944 of 1965 and 816 of 1966

Chinna Pillai

APPELLANT

Vs

N. Govindaswami Naidu and Another

RESPONDENT

Date of Decision : 31-03-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 9
Specific Relief Act, 1877 — Section 9
Transfer of Property Act, 1882 — Section 105, 53A

Citation : AIR 1969 Mad 191 : (1968) ILR (Mad) 335

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : R. Gopalaswami Iyengar, for the Appellant; N.A. Subramaniam, K.S. Sundaram, K.N. Ramasubramani Iyer and Lakshmi Sundaram, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—The 1st defendant in O. S. No. 82 of 1963 on the file of the Court of the Subordinate Judge of Madurai is the

petitioner in C. K. P. No. 816 of 1966 and the 2nd defendant is the Petitioner in C. B, P. No. 1944 of 1965. The plaintiff filed the suit in the Court

of the Subordinate Judge of Madurai u/s 9 of the Specific Relief Act, 1877. The plaintiff's case is that he was a lessee under the 1st defendant and

from the year 1953-54 the plaintiff as such lessee was in occupation of the vegetarian and the non-vegetarian stalls belonging to the 1st defendant

and situate in the Central Bus Stand, Madurai. The plaintiff also avers that during 1954-55 he carried out extensive improvements to both the stalls

at a cost of about Rs. 30,000/- and the stalls as they exist to-day were not constructed by the municipality. The lease deeds Exs, B-13 and B-14

were executed both between the plaintiff and the 1st defendant and they cover

the period commencing from 1-4-1960 and expiring with 31-3-1963. The plaintiff is said to have applied for a renewal of the Lease on 14-2-1963 after having paid the licence fee for running the respective hotels for the year 1963-64 under Exs. A. 61 and A.62. On 14-3-1963 the 1st defendant passed a resolution stating that the leasehold interest in the two stalls in question would be auctioned on 22-3-63. The plaintiff petitioned on 21-3-1963 asking for a renewal of the lease and indicating therein that he has practically reconstructed the stalls at a heavy cost and that the lease should therefore be renewed in Ms favour. On 23-3-1963, the plaintiff was directed to produce the records in his possession to show that he constructed the buildings and effected the improvements. It is therefore not denied that the constructions were so put up as claimed by the plaintiff. It is the plaintiff's case that he went to the office of the Commissioner of the municipality, but as he was not available, the accounts were not scrutinised. As resolved, the auction was held on 22-3-1963 and the leasehold interest of the vegetarian stall was auctioned and purchased by the 2nd defendant in the suit. This was also confirmed later. The plaintiff again requested for a renewal of the lease in spite of the auction and on 2-5-1963 the plaintiff sent three separate cheques, one for Rs. 2,100/-, the second for Rs. 700/- and the third for Rs. 400/-, representing respectively the advance, the rent for April, 1963 and the caution deposit for the occupation of the stalls. It is in evidence that these cheques were cashed but the 1st defendant would have it that the amounts were kept in deposit register and were not adjusted towards the rent for April, 1963, D. W. 2 who was examined on behalf of the 1st defendant, however, admits that as per the entry in Ex. B-18 the amount of Rs. 700/- was received as rent. The Lower Court also finds that this was adjusted as and by way of rent. I shall revert to this aspect at a later stage.

2. Finally, the plaintiff received a communication on 5-6-1963 rejecting his request for renewal of the lease in his favour. On 6-6-1963 at. about 5-30 p.m., when the plaintiff was carrying on his normal business in the stalls the 1st defendant with the help of its officers and the police entered the suit premises, threw away the articles from the hotel to the outside platform and practically forced out the persons who were taking tiffin in both the hotels and drove out the plaintiff's servants therefrom. The 1st defendant having

thus taken possession of the two premises, out the 2nd defendant, the new lessee, in possession of the vegetarian stall on 9-6-1963. The non-vegetarian stall was re-auctioned on 12- 6-1963 in spite of the protests by the plaintiff, and even so the 2nd defendant was the successful bidder and it appears that the non-vegetarian stall is also now in the possession of the 2nd defendant. The 1st defendant's contentions are that the plaintiff is not a lessee, but only a licensee; that even if he were to be regarded as a lessee, the lease deeds Exs. B-13 and B-14 being leases entered into between the 1st defendant and the plain tiff strictly in accordance with the provisions of the Madras District Municipali ties Act, they should be characterised as statutory leases and any re-entry made by the 1st defendant pursuant to one or the other of the express covenants in such lease deeds tantamounts to taking possession of the stalls from the plaintiff under due process of law within the meaning of Section 9 of the Specific Relief Act. They would also contend that such dispossession was with the consent of the plaintiff and the plaintiff cannot be deemed to be a person in lawful or juridical possession of the stalls at or about the time when he was forcibly evicted therefrom, that the amount of Rs. 700/- sent by the plaintiff was not received and accepted by them as rent and there has not been therefore, any waiver of the forfeiture of the lease and that they had the right in law and under the terms of the lease deeds to secure forcible possession of the stalls from the plaintiff. The 2nd defendant would state that he is a bona fide purchaser without notice of the disputes between the 1st defendant and the plain tiff and as such his possession cannot be disturbed.

3. Mr. M. K. Nambyar appearing for the 1st defendant contends that the plaintiff had no possession in the eye of law on the date when the 1st defendant sought entry into the stalls with the aid of its officers and police and that the plaintiff was merely a licensee on whom the 1st defendant had sufficient control and who could forcibly be evicted after the expiry of the licence granted by the 1st defendant to the plaintiff to occupy the stalls. In any event, even if the plaintiff were to be considered as a lessee, he having no juridical possession of the property on the date when he was evicted therefrom and such eviction being with his consent and under due process of law and there is no cause of action for the plaintiff to

institute this summary suit u/s 9 of the Specific Relief Act for restitution and re-delivery of the stalls thus taken possession of from him. Mr.

Gopalaswami Iyengar appearing for the 2nd defendant, petitioner in C. R. P. No. 1944 of 1965 contends that the 2nd defendant was not aware of

any dispute regarding the possession of the stalls in question and that he took such leasehold interest by bidding at a public auction and therefore

his possession ought not to be disturbed.

4. Mr. Rajah Iyer appearing for the plaintiff contends contra and states that no revision would lie as against the judgment and decree of the lower

Court as the defendants have an alternative, efficacious and adequate remedy by way of an independent suit on the basis of their title and they

cannot therefore take law into their own hands to dislodge a person in lawful possession and, after such issues were tried in a suit instituted u/s 9 of

the Specific Relief Act, come up to this Court u/s 115 of the CPC as if there is a jurisdictional error on the part of the lower Court which directed

re-delivery of possession. In the alternative he contended that the findings of fact recorded by the trial Court on essential matters concerning the

issues in the suit cannot be disturbed in revision. He particularly contended that the finding that the rent for April 1963 was accepted by the 1st

defendant as rent is a finding of fact which is sacrosanct and which cannot be revised by this Court u/s 115, C. P. C. Similarly the finding that till 6-

6-1963 the plaintiff was a tenant holding over and was in lawful possession is again a finding of fact which cannot be disturbed in revision. He also

contended that it is a misnomer to call Exs. B. 13 and B. 14 as statutory leases and continued that simply because the leases were entered into in

accordance with the certain provisions of law and the lease deeds by themselves do conform strictly to the prescribed form under the Municipal

Manual, they cannot be relegated to the status of statutory leases or, in other words, leases containing covenants having the force of law and that

therefore the action of the municipality in having forcibly evicted the plaintiff who was in lawful possession is not in accordance with law. According

to him, the buildings put up by the plaintiff were so put up with the knowledge of the Municipality and even if they are structures duly sanctioned by

the municipality, they should be deemed to have been so put up with their connivance and having thus stood by and acquiesced in the erection of

such stalls at a heavy cost of Rs. 30,000/-, the municipality cannot appropriate such property to themselves under "the guise of a covenant in a lease deed which is but a contractual one.

5. On an analysis of the contentions raised by the learned Counsel appearing on either side, the following points have to be determined: (1)

Whether the respondent was a lessee or licensee in occupation of the suit premises? (2) Whether the respondent was in possession of the premises

on the date when he was forcibly evicted therefrom? (3) Whether such dispossession was without his consent? (4) Was such dispossession

otherwise than in due course of law? (5) Is the Civil Revision Petition at all maintainable? (6) Can the findings of fact recorded by the trial Court be

reagltated in this revision u/s 115, C. P. C.? and (7) Is the claim of the 2nd defendant that he is a bona fide purchaser of the leasehold interest

sustainable?

6. I shall now take up the primary question argued before me at length by Mr. M. K. Nambyar that the relationship between the plaintiff and the

1st defendant is that of a licensee and licensor and not lessee and lessor. In order to find the basis for his argument and taking into consideration

Exs. B. 13 and B. 14, the deeds which govern the relationship between the parties, learned Counsel states that the municipality granted only a

licence to the plaintiff to occupy the stalls in question. He invited my attention to the two decisions of the Supreme Court, one reported in

Associated Hotels of India Ltd. Vs. R.N. Kapoor, . and the other in Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others, . In

the former case, though on the facts the majority of the learned Judges held that the occupant can only be deemed to be a licensee, yet the

dissenting judgment of Subba Rao, J., (as he then was) was relied upon to show the characteristics that distinguish a licence from a lease. Subba

Rao, J., (as he then was) referred to the dictum of Lord Denning in Errington v. Errington. (1952) 1 All ER 149 which ran as follows:-

The result of all these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be a tenant,

nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy".

The learned Judge formulated the following proposition as well established:

(1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties - whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease".

In *Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others*, the above tests have been reiterated, but in a different form. The

following observation in the decision of the Supreme Court is very apposite:

The fact that a stall holder has exclusive possession of the stall is not conclusive evidence of his being a lessee. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere licence but as a lease". — —

It would be very convenient to state here that in *Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others*, none of the stall holders

or their servants is allowed to stay in the market after closing time and there was no question of a stall holder being able to lock up the stall before

leaving the market at the end of the day. It was pointed out that the right which the stall holder in that case had was to the exclusive use of the stalls

during stated hours and nothing more, and it was held as a fact that it could never have been the intention of the parties to grant anything more than

a licence to the stall holders. From a scrutiny of the texts of the principles laid down in the above two decisions of the Supreme Court it is clear that

the criterion to determine whether a particular person is a lessee or a licensee mainly depends upon the intention of the parties and if such a

relationship is reduced to writing it is not by itself the sole guide. If, however, one party has the exclusive right of possession over the property and

if an interest in the property is created, it ought to be construed as a lease. In this case, the lower Court finds that the premises were under the lock

and key of the plaintiff and that he was in the exclusive possession and control of the premises. The intention of the parties is spoken to expressly

by D. W. 1 the Market Superintendent, who says that the plaintiff is a lessee. It is also found that notwithstanding the closure of the Central Bus

Stand between 11 p.m. and 4 a. m. every day, the plaintiff had ingress and egress to the stalls on the West Veli Street which has another

Independent entrance to the hotels in question. This is evidenced by Ex. A. 23. Accepting this finding of the lower Court and independently of it, I

am of the View that the intention of the parties was to create the relationship of lessor and lessee and the plaintiff was not only in exclusive

possession of the stalls but such possession was coupled with an interest in the properties themselves.

7. The point to be remembered, however, is whether the finding of the lower Court that the relationship as interred from the documents Exs. B. 13

and B. 14 is that of a lessor and lessee is a matter which was within the jurisdiction of the lower Court to decide or whether it assumed jurisdiction

or excessively or illegally exercised jurisdiction to decide the question. In my opinion, the point does not involve a question of law pertaining to the

jurisdiction of the lower Court. If, therefore, the lower Court can decide and come to the conclusion on the subject over which it had jurisdiction

and if it has held that Exs. B. 13 and B. 14 are in the nature of lease, then can this Court, exercising jurisdiction u/s 115 of C. P. C. interfere with

such a finding? The law is well settled now and reference may usefully be made to Manindra Land and Building Corporation Ltd. Vs. Bhutnath

Banerjee and Others, . The following passage there is very instructive:

It is not open to the High Court in the exercise of its revisional jurisdiction u/s 115, to question the findings of fact recorded by a Subordinate

Court. Section 115 applies to cases involving questions of jurisdiction, i.e., questions regarding the irregular exercise or non-exercise of jurisdiction

or the illegal assumption of jurisdiction by a Court and is not directed against conclusion of law or fact in which questions of jurisdiction are not

involved.

..... The distinction between the two classes of cases is that in one, the Court decides a question of law pertaining to jurisdiction. In the other, it

decides a question within its jurisdiction",

In the instant case, the Court has decided a question within its jurisdiction. It is, therefore, binding on me sitting in revisional jurisdiction.

8. Even if it were to be scrutinised, I find least difficulty in rejecting the arguments of the learned Counsel for the Petitioner that the documents in question are not leases. The very fact that the documents were admittedly drawn up pursuant to Section 303 (2) (d) of the District Municipalities Act and that it was so done under clause (4) of Rule 12 of the Municipal Manual appearing at page 55 of the 1957 Edition, shows that Immovable property belonging to the Municipal Council has been transferred by way of lease to the plaintiff and that is why the prescribed Form III (a) in Schedule III appended to these rules was adopted. Though the nomenclature used or adopted by the parties may not be the sole guide to determine the nature and character of the deed, yet in the circumstances of this case, it throws abundant light upon the intention of the parties which is one of the acid tests laid down by the Supreme Court to determine the relationship between the occupant and the owner. Exs. B. 13 and B. 14 should therefore be construed as leases, having regard to the dictum in Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, .

9. In so far as the question of possession is concerned, it is not in dispute that the respondent was actually occupying the stalls in question on the date when he was dispossessed. This has been found as a question of fact by the trial Court and it is binding on me u/s 115, C. P. C. In fact, the process adopted by the Petitioner in forcibly evicting the respondent therefrom is not in dispute either. Police assistance was also sought. But the point to be considered is whether the possession of the premises claimed by the respondent is juridical possession. English law provides a penalty by way of imprisonment in case a person secures forcible possession from a tenant. In Indian Law, however, the person unlawfully dispossessed by use of force is entitled to restitution by the specific provision made for the purpose originally by Section 15 of the Limitation Act of 1859 and now under the provisions of the Specific Relief Act. Section 9 of the Specific Relief Act reads as follows:-

If any person is dispossessed without his consent of immovable property otherwise than in the course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit".

The cardinal rule, therefore, appears to be that no one can be dispossessed by another on the foot of the latter's superior title, if any, if such

dispossession is against the wish of the occupant, not under the process of law and when the person dispossessed is in lawful occupation of the premises. Even the rights of re-entry ordinarily envisaged in leases are subject to the salutary principles above stated. Courts which exercise jurisdiction justly, equitably and conscientiously always relieve leases against forfeiture and provide against re-entry forcibly in spite of a covenant expressly to that effect in the lease deed. A tenant in possession, but who is holding over cannot be terminologically equated to a squatter, wayfarer or trespasser. Such a person in possession, no doubt, should establish a possessory title which has fruited to his benefit prior to the date of forcible dispossession. This is commonly referred to as juridical possession. In my opinion, a tenant who holds over after the expiry of the lease by efflux of time is not to be characterised as a trespasser and as a person who has no possessory title in him enabling the landlord to take law into his own hands and disturb such juridical possession of the property to which such tenant holding over the demised property is entitled in law. "Juridical possession in one (although it might not depend on the legal title to possess as in the case of an owner), is actual possession with an intention of maintaining himself in possession" - Vide Neyveli Lignite Corporation Ltd. and Others Vs. K.S. Naravana Iyer, . In this case the tenant was actually running the business on the date when the Petitioner, with the assistance of the police, threw him out. In fact, edibles were prepared and the stalls were doing normal business. The prepared edibles and the material and stock on hand were thrown out of the premises. The servants were driven out. As already stated, the manner in which the respondent was pushed out of the premises is not seriously in dispute. One thing, therefore, clearly emerges from the facts disclosed on the date of dispossession. The respondent who was holding over did really want to maintain his possession and there could be no two opinions about his subjective intention to continue lawfully in possession of the premises. It has been found as a question of fact by the lower Court that the 1st defendant accepted the sum of Rs. 700/- as rent. This is another indicia to establish that the plaintiff was in lawful possession of the property on 6-6-1963 when he was forcibly dispossessed. It has to be, therefore, necessarily concluded that the respondent was in juridical possession of the demised property on the date when he was dispossessed. Though it is not

absolutely necessary, it may incidentally be observed that Memo No. 8663-I-H, dated 14-3-1953 of the Local Administration Department,

Government of Madras also throws considerable light upon the nature of the possession held by the plaintiff. At the time when the Government

Order was passed, the municipality did not apparently, construct pucca stalls for locating the vegetarian and non-vegetarian stalls. On the strength

of this Government Order, the plaintiff who was having a lease mostly of the site including a very small unimpressive structure involved himself in a

heavy expenditure and put up structures at a cost of Rs. 30,000/-. In effect, therefore the lease appears to be a lease of land with liberty to the

lessee to put up structures thereon, which he did. As has been held by the Supreme Court in *Sivayogeswara Cotton Press, Devangere and Others*

Vs. M. Panchaksharappa and Another, where a land is let out for building purposes without a fixed period, the presumption is that it was

intended to create a permanent tenancy. Though the principle laid down by the Supreme Court is not in its entirety applicable to the facts of the

present case, but yet in the light of the findings of fact by the lower Court that the 1st defendant is bound to continue the plaintiff as lessee in view

of the above Government Order, I am of the view that even viewed from this perspective the possession of the plaintiff of the suit stalls on 6-6-

1963 was lawful.

10. Before I proceed to discuss the other contentions raised, it is convenient at this stage to deal with the scope of Section 9 of the Specific Relief

Act. Section 9 appears in Part II of the said Act under the caption of "Specific Relief" and in Chapter 1 under the head "Of recovering possession

of property". Section 9 is substantive in its scope and is indeed a shield against improper, unauthorised and high-handed action on the part of

landlords to dispossess tenants under the strength of their superior title. Such title if any in the landlords have to be established in Courts of law by

setting in motion the normal process of law in a Court of justice. Notoriety in the act of dispossession without lawful authority, is the very negation

of common law rights vested in a tenant to continue in possession and it is this which is relieved against expressly by the Legislature making a

substantial provision in Section 9 of the Specific Relief Act. It is, therefore, necessary that the elements constituting the Section have to be

complied with strictly and the absence of any one of the prescribed elements therein would entitle the person dispossessed to restitution. Though

self-help is the best help, it is not so in the eye of law when a landlord attempts to take law into his own hands to evict his tenant without due

process of law. The scope of Section 9 has been considered in full by Ramachandra Iyer, C, J. and Anantanara-yanan, J., (as he then was), in

Neyveli Lignite Corporation Ltd. and Others Vs. K.S. Naravana Iyer, as follows:-

The remedy given under the statute is not a substitute for an ordinary civil action based on title whether, such title be actual or possessory. It is a

summary possessory process like the one provided for u/s 145, Cr. P. C., involving the decision on the rights of the parties, except in regard to

actual possession on the date of dispossession, available to a wrongful party under certain circumstances"".

Being so summary in nature, it cannot be lightly resorted to.

11. I shall now consider the contentions of Mr, Nambyar that the tenant was dispossessed by due process of law and that the other requirements

of the Section are satisfied and that, therefore, the respondent is not entitled to restitution. I have already held that the respondent was in juridical

possession of the demised stalls. To substantiate his contention, the learned Counsel for the Petitioner took me in detail to the various provisions of

the District Municipalities Act, the Rules and the Municipal Manual. Section 303 of the Madras District Municipalities Act (V of 1920) provides

for subsidiary legislation and enables the State Government to make rules to carry out all or any of the purposes of the Act. Section 303 (2) (d) in

particular provides for the conditions on which property vested in the Municipal Council may be transfer red by lease. Section 304(c) states that all

rules made u/s 303 shall be published in the Official Gazette and upon such publication shall have effect as if enacted in the Act. The Municipal

Manual which has also been referred be fore by me is a compilation of the rules framed under the Madras District Municipalities Act of 1920 and

also includes certain executive instructions issued by the Government. Under the caption ""Acquisition and Transfer of Immovable Property by

Municipal Councils"", the Municipal Manual, printed in 1957, at page 55, under clause 4 provides that a Municipal Council may lease out any

immovable property belonging to it; but the lease deed shall be in Form III (a) in

Schedule III appended to the rule "with such variations as circumstances may require". The underlining (put in here - Ed.) is mine. At page 73 of the said Manual, the form prescribed for a lease deed is printed. The opening paragraph provides that the expression "lessor" shall include its successors and assigns, and the expression "lessee" shall include his heirs, executors, administrators, legal representatives and permitted assigns. Clause 2 (8) of this lease deed reads as follows:

To yield up the demised premises with all fixtures and additions thereto at the determination of the tenancy in good and tenantable repair and condition in accordance with the covenants herein contained".

Clauses 4 (1) and (2) provide for a right of re-entry and the right of cancellation of the lease under certain circumstances by the Collector of the District. Clause 7 of the main rule appearing at page 56 of the Manual obliges the Municipal Council to publish a notice of the proposed lease and in case where the property is to be leased by public auction, to publish such a proposal in the District Gazette containing full particulars of the property to be leased, the name of the proposed lessee and the consideration for the transfer and in the case of a lease by tom-tom in suitable places. A provision is made also for dispensing with such publication in the District Gazette under certain circumstances. One of the clauses in Ex. B. 13 which is the lease deed, compels the lessee to abide by the rules and regulations as provided for in the District Municipalities Act and the rules framed thereunder. My attention was next drawn to Section 355 (b) of the Act which enumerates the duty of every police officer vis à vis the executive of the Municipal Council and its officers. The police officer is obliged under this Section, to assist the executive authority or any officer of the Municipal Council, reasonably demanding his aid for the lawful exercise of any power vested in the council or its officers under the Act or any rule, by-law or regulation. Section 359 provides an interdict against obstruction of Municipal Authority by any person in the performance of their duty or anything which they are empowered or required to do by virtue of or in consequence of this Act or by-law, rule, regulation or order made under it. Particular attention has been drawn to a clause in the lease deed which provides for re-entry and taking up possession by the Municipal Authority after the expiry of the lease without the consent of the lessee. After

referring to the above provisions. Mr. Nambyar submitted that the local Government being a part of the machinery of the Government, they are enabled in law to lease their properties and get back their properties by themselves without recourse to law. In substance and in effect, his submission is that the provisions referred to above read as a whole compendiously vest in the Municipal Council the sole authority to take possession of properties in the hands of their lessees when the lease expires by efflux of time even without the consent of occupant by resort to the express provisions of re-entry in the lease deed and with the assistance of police and without obstruction by none. The argument proceeds that the various provisions of the lease deed and the covenants in the lease deeds by themselves do have a statutory force and any act done or purported to be done in enforcement of any one or the other of the provisions contained therein, however, penal or however notorious the Act may be, must be deemed to be acts done under due process of law. The following passage in *State of Uttar Pradesh Vs. Singhara Singh and Others*, is pressed into service;

..... if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted".

It is therefore argued that the power to transfer property by way of lease by the Municipal Council having been derived by the Act and the rules and the prescribed form being telescoped into such rules of procedure or substantive law, must be deemed to be statute law by itself and therefore any act done under it is lawful. I am unable to be persuaded to accept this extreme contention. At the outset there is no express power under the District Municipalities Act or the Rules made thereunder to evict a tenant holding over without recourse to ordinary law Courts. Exclusion of jurisdiction of Civil Courts in matters concerning civil rights ought not to be lightly inferred. Unless the Court is compelled to do so by an express provision or by one to be inferred by necessary implication, such ouster cannot be assumed.

12. The statute, as is normal in any enactment of a Legislature, whether it is of

the State Legislature or of the Parliament, sometimes prescribes certain restrictive provisions and also requires local bodies to adopt, for unanimity sake, certain forms under which they could transfer their properties by way of leases or otherwise. Once, therefore, the parties do adopt the form prescribed with such variations as required and as are agreed to, could it be said that the lease deed which is the creature of the application of either substantive or procedural law prescribed by the Legislature or Parliament, acquired the status of law by it-Self for the one and only reason that meticulous care has been taken in drafting the lease deed in accordance with the prescribed directives of the provisions of law? My answer is in the negative. Once the lease deed is entered into, that is the sheet-anchor which governs the rights and the correlative duties between the lessor and the lessee and such mutual contractual obligations are governed by the common law. In my opinion, by adopting the form prescribed, by following the various substantial sections under an enactment and ultimately entering into what is known as a contract of lease, such a deed cannot in any sense be understood to be as the very substitution of common law rights to which one or the other party is entitled to and such a contract cannot be immune or free from the impact of common law or any other special law and -its provisions. Once the lease deeds Exs. B. 13 and B. 14 have been entered into, that is the indicia which would govern the relative rights and obligations of parties and that deed by itself cannot be understood as being synonymous to statute law or for the matter of that "law". If that were so, every contract which has the sanction of law, will by itself be "law" as is popularly understood, notwithstanding the fact the parties to the said contract had the right to vary the prescribed form and adopt clauses, apart from and independent thereto. Anything done under such a contract may be sought to be sustained as legal, but it is not the same thing to say that it was under due process of law. Therefore, the leases being essentially in the nature of contracts, anything done or purported to be done under them must be subjected to and scrutinised and passed by adopting the principles of the common law of the country. I have not been impressed with the argument that the lease deed in question must be deemed to be a statutory lease as against an ordinary contractual lease. Once a lease, it is always a lease and it is

governed by the ordinary provisions of law.

13. Mr. M. K. Nambyar sought to draw certain analogies by reference to the provisions in the Madras Estates Land Act, 1908, and the Motor

Vehicles Act, 1939 to sustain the argument that the lease deeds in the instant case and its provisions have the force of law. The permits issued

under the Motor Vehicles Act are purely discretionary and not a matter of volition and discussion between the State and the grantee. In fact, no

one if he satisfies all the prescribed conditions, is entitled to the grant of a State Carriage Permit as of right. The Regional Transport Authority has

the power under the Act to fix and impose such conditions as are prescribed. I am therefore, unable to accept the argument that a permit under the

Motor Vehicles Act and the conditions: attached thereto can advantageously be looked into for interpreting the lease in question entered into by

the municipality with its lessees. Whereas the former appears to me to be creatures of statute, the latter is the product of mutual negotiation and is,

therefore, purely a contract. Even so, a reference to Section 77 et seq of the Madras Estates Land Act, 1908, do not appear to me to be apposite

in the instant case,

14. The argument was sought to be supported with reference to the clauses intrinsically appearing in the lease deed themselves. I have been taken

through the various clauses wherein the municipality is said to have absolute control over the lessee in occupation of the stalls. I have already

expressed the view, while considering whether the plaintiff is a lessee or a licensee, that such control and supervision was reserved by the

municipality in order to further its rights to see that the stalls are kept in a healthy and a sanitary atmosphere. To hold otherwise would only militate

against the express intention between the parties that there was a transfer of an interest in immovable property by the municipality to the lessee.

Therefore the various clauses appearing in Exs. B. 12, B. 13 and B. 14 whereby the executive authority reserved to itself the control and

supervision over the lessee, do not only, not make it a licence but cannot vest in it a right to substitute itself into a Civil Court and forcibly evict a

lessee who is in lawful occupation of the premises. Simply because the lessee agreed to abide by the relevant general and special conditions of

lease mentioned in Ex. B. 12 and also because the lessor has the liberty to take

possession of the premises without his consent if he fails to deliver

possession on the expiry of the lease, it cannot be said that the above clauses appearing in Exs. B. 12, B. 13 and B. 14 can be placed in a part or

read in pari materia to the provisions of law as passed by the State Legislature which by themselves would enable the lessor, without resort to

Court and without due process of law, to obtain forcible possession and re-enter the premises.

15. Sri K. Rajah Iyer contending contra states that the plaintiff was dispossessed without recourse to due process of law. In the classical words of

Batchelor, J., in *Rudrappa v. Narasingarao*, I.L.R.(1905) Bom 213 :

To read the words "'due course of law'" (in Section 9 of the Specific Relief Act) as merely equivalent to the word "legally" is, we think, to deprive

them of a force and a significance which they carry on their very face. For a thing, which is perfectly legal, may still be by no means a thing done "'in

due course of law"' ; to enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the

consideration and pronouncement of the law, and the "'due course of law'" means, we take it, the regular, normal process and effect of the law

operating on a matter which has been laid before it for adjudication,

In a case where the State of Pepsu dispossessed a person in lawful possession of Immovable property on the foot of its superior title, it was

observed by a Division Bench of the Punjab High Court in *State of Patiala and E.P. State Union, Patiala Vs. Mohinder Singh Natha Singh*, as

follows:

The general purpose of the law is that regardless of the actual condition of the title to, or the right of possession of the property, the party actually

in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. There is no provision 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. If the State Government were of the

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".

While considering the scope of mining lease granted to a company by the Government under the Mineral Concession Rules, 1960. framed under

the Mines and Minerals (Regulation and Development) Act, 1957, which is very nearly comparable to the lease granted to the plaintiff in this case,

Dixit, C. J. and Pandey. J., in United Collieries Ltd. and Another Vs. Engineer in Chief, South Eastern Rly. and Others, put the position in the

following terms:

The Petitioners' claim is founded solely on the lease deed and not in any statutory provision. True, the lease was granted to the Company under

the Mineral Concessions Rules 1960 framed under the Mines and Minerals (Regulation and Development) Act, 1957. But that does not give to the

lease deed or any of its terms the status of a statutory provision or a rule. There is no provision either in the Act or the rules laying down that a

lease granted under the rules would be read as a part of the Act or the Rules. It is, therefore, erroneous to say that the liberties, privileges and

powers granted to the petitioner-Company by the lease are statutory warran"" ties or rights and privileges. They are nothing more than contractual

rights and privileges""

Even so. in this case. It cannot be said that the provisions of the lease deed or the gazette publication Ex. B. 12 have the status of law. There is no

provision to the effect that the provisions of Exs. B, 12, B,13 or B,14. shall be treated or deemed to have been treated as part and parcel of the

Madras District Municipalities Act and the rules made thereunder. Thus the covenants in Exs. B. 12, B. 13 or B. 14 are purely contractual in its

nature, scope and effect and cannot, therefore, be characterised as law which could be enforced by a party to the document. In Firm AL. AR.

Arunachalam Chettiar and Others Vs. Kaleeswarar Mills Ltd., Coimbatore and Others, a Division Bench of this Court had to consider the legal

effect and force of the Memorandum and Articles of Association of a Company, and observed as follows:

..... though having regard to Sections 36 and 291. Companies Act, the memorandum forms the constitution of the company and the articles, the

rules regulating the conduct of the affairs of the company, and as such forms part of the law so far as the company is concerned, where the

particular provisions in the memorandum and the articles of association are the result of a contractual arrangement entered into between the

company and the Petitioner with reference to their managing agency rights, and

it is only those contractual rights that are put into the memorandum and the articles of association, it is only because of the contractual obligations, the company would be bound to respect the rights of the petitioners and not because they are enjoined to do so by any law or statute for the time being in force. In such a case the duty sought to be enforced though embodied in the Memorandum and articles of the Company, cannot be placed on a higher footing than a contractual obligation

In *Kali Mohan v. Agartala Municipality*, AIR 1959. Tripura 47 , a case similar to that under consideration arose. There, the petitioner occupied a market site belonging to the Municipality and built on it, to their knowledge, certain structures. He occupied the premises for about five years when he was evicted by force. In the absence of any specific provision in the Tripura Municipal Act to eject the holder of the site summarily, it was held that the action of the Municipality was without the authority of law and, therefore, illegal and without jurisdiction. If the petitioner had no right to continue in possession, the only course open was to eject him by having recourse to a civil suit, in which alone the question of the rights involved could be decided. Finally, Ramachandra Iyer, C. J. and Ananta-narayanan, J., (as he then was) in *Neyveli Lignite Corporation Ltd. and Others Vs. K.S. Naravana Iyer*, evolved the following two principles underlying the basis of the statutory provision, namely, Section 9 of the Specific Relief Act, which, according to them, are of universal application:

Those two principles are: (1) to discourage persons from taking the law into their own hands and derive benefit by that process, the benefit being that of getting possession so secured and also incidentally depriving the other party of the benefit under the law which but for the dispossession he will have the right of retaining such possession till the person who wants to wrest it from him, proves a better title; (2) that the law and orderly administration of the country require that possession even by the owner of the property should be taken by adopting the process prescribed by law and not by mere self-help,

In the instant case, in the absence of any special power explicitly provided for in the District Municipalities Act or the rules made thereunder, it cannot be said that the 1st defendant acted under due process of law to evict forcibly the plaintiff from the two stalls in question. Under the garb of

certain recitals In the contracts embodied in the lease deeds in question, it cannot be assumed that due process of law was set in motion by the 1st

defendant when the plaintiff was driven out of the stalls. Contracts do not have the status of law and they cannot be interpreted as valid substitutes

to provisions of law. I, therefore, find that one of the salient and necessary ingredients of Section 9 of the Specific Relief Act has been offended in

that the dispossession in the instant case is otherwise than in due course of law.

16. The next point urged is that the dispossession is with the consent of the lessee. The lower Court has found rightly that it was not so. The facts

already narrated and the circumstances of the case do not at all warrant the conclusion that the dispossession was with the consent of the

occupant. Reference is made to a clause in the lease deed that possession can be secured even without his consent. A breach of such an obligation

may give rise to a cause of action which can be agitated in a Court of law; but it does not vest in the municipality the right to throw out a person

and appropriate the superstructure put up thereon by the plaintiff if he refuses to deliver possession when demanded.

17. This being a revision petition u/s 115, C. P. C., the findings of fact and even of law not touching upon the jurisdiction of the Court below had to

be accepted.

18. The 2nd respondent hesitantly argued that he is a bona fide purchaser without notice of any dispute between the municipality and the plaintiff

and that Section 9 of the Specific Relief Act is subject to Section 53-A of the Transfer of Property Act. The contract between him and the 1st

defendant having been partly performed and he having been put in possession, he should not be disturbed at this stage. If this argument were to be

accepted, the very intention and purpose of the relief guaranteed to the aggrieved person u/s 9 of the Specific Relief Act can easily be rendered

nugatory by a third party being let into possession by the person acting high-handedly. According to the argument, the plaintiff is helpless in such

circumstances, Can the normal effects of Section 9 of the Specific Relief Act be rendered otiose by a clever machination on the part of a wrong

doer? I think it cannot be and it ought not to be encouraged. I accept the finding of the Court below that the 2nd defendant ought to be aware of

the disputes regarding the stalls. The 2nd defendant cannot claim a better right

than the 1st defendant by invoking the equitable doctrine envisaged in Section 53-A of the Transfer of Property Act. Whatever right the 2nd defendant may have against the 1st defendant, it is clear that he has been inducted into possession of the two stalls without his transferor having a right in law to do so. He should also suffer the decree for possession granted in favour of the plaintiff by the trial Court.

19. Lastly, I am obliged to advert to the contention raised by Sri K. Rajah Iyer that the Civil Revision Petitions themselves are not maintainable. He

referred to various decisions of this Court In *Amirthalingam v. Lakshmanaswami Mudaliar*, (1959) 72 MLW 361, *Veerasami Mudali Vs. P.R.*

Venkatachala Mudali and Others, and Badri Das and Others Vs. Mt. Dhanni and Another it was held that no revision would lie against the

judgment and decree u/s 9 of the Specific Relief Act. But a Division Bench of this Court in *Neyveli Lignite Corporation Ltd. and Others Vs. K.S.*

Naravana Iyer, held that such a revision is maintainable if there is a jurisdictional error. Whatever may be the reason on which the latest Bench

decision rested, the Civil Revision Petition was entertained and I am therefore bound by it. I am unable to accept that these Civil Revision Petitions are not maintainable.

20. The result is that the judgment and decree of the trial Court is confirmed and the Civil Revision Petitions are dismissed with costs. Advocate's

fee Rs. 250/-in each.