
(1956) 02 CAL CK 0022
In the Calcutta High Court
Case No : Matter No. 61 of 1953

Dhirendra Kumar

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 02-02-1956

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 226, 31, 31(1)

Citation : AIR 1956 Cal 437

Hon'ble Judges : Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sinha, J.—This is an application made by one Dhirendra Kumar Roy Chowdhury, as a member of an unincorporated society of persons known as the National Cricket Club, having its office at Eden Gardens, Calcutta. The facts are shortly as follows : There exists in the city of Calcutta, at a spot very near these Courts, an open space known as the Eden Gardens. In a part of the said Gardens there existed a cricket ground, which came into existence as far back as 1825. For a large number of years, and at the time when India attained independence, the cricket ground was in the* occupation of the Calcutta Cricket Club, the members whereof were mostly foreigners. After India attained independence, there was a move for taking over the lands and structures then in the possession of the Calcutta Cricket Club, and it appears that in or about 1950 an unincorporated association known as the National Cricket Club came into existence. The members of this Club raised a sum of about two lakhs and this was paid towards compensation received by the Calcutta Cricket Club, which, I am informed, has moved elsewhere. The National Cricket Club or the N. C. C. as it has come to be known, took possession of the lands and structures previously occupied by the C. C. C. Originally these consisted of a cricket ground and the Club premises with its furnitures, fittings and excise licence. Since then, sporadic attempts have been made to construct a stadium. Some stands have been constructed but it can

scarcely merit the description of a stadium. It appears from the correspondence carried on between the Secretary of the N. C. C. and the Chief Minister of West Bengal, that what was contemplated was that the unincorporated association should be registered under the provisions of the Societies Registration Act, and the Government should execute a lease in favour of the registered society which would complete the construction of a stadium known as the Ranji Stadium, This fact is not disputed and appears clearly from the letter dated 20-11-1950 written by Mr. Pankaj Gupta to Dr. Roy, copy whereof is contained at p. 22 of Ex. A annexed to the affidavit affirmed by Rabindra Kumar Mitra on 22-4-1955. The correspondence and the relevant documents have been conveniently collected in Ex. A annexed to the said affidavit and I shall refer to the said Exhibit and to the pagination thereof. Before I enter into the details of the further events, I shall delineate shortly as to what happened. The unincorporated association did get itself registered and the certificate of registration is dated 31-1-1951 (p. 1). Draft leases were prepared, providing for the granting of a lease for 99 years to the said registered society. Thereafter, disputes commenced. Firstly, the dispute was with regard to the ownership of the Eden Gardens. Previous to the attainment of independence, the Gardens were undoubtedly held by the Centre. After independence, lands which were used for the purposes of the Union vested in the Union and lands which Were used for the purposes of the State, vested in the State. It appears that nobody paid any attention to the question as to the purposes for which the land in question was being used at the material point of time, and while the Union never abandoned its claim, a draft lease was prepared on the footing that the State of West Bengal would be the lessor, meaning thereby that the land had vested in the State. It appears from a letter addressed by the Government of India in its Ministry of Defence, to the Government of "West Bengal, dated 8-3-1951 (p. 85) that the Government of India had no objection to the site in question being leased to the National Cricket Club, on payment of an annual rent (nominal) of Re. 1/- for the erection of a cricket Stadium thereon. It is stated in that letter that the delegation of control over the Calcutta Maidan which included the Eden Gardens, by the Government of India to the Government of Bengal in 1921, did not operate as a transfer of the proprietary interest of the former in the land, and so it would not be legally in order for the State Government to grant a lease of the property in question, the lands being vested in the Union of India under Article 294 of the Constitution. The deed of lease should be in the name of the President of India. It was proposed, however, to delegate the power of executing the lease on behalf of the President in such a manner as to enable the Secretary, Home Department, Government of West Bengal to execute the lease on behalf, of the President. The State of West Bengal now contends that the land has vested in the State. It does not propose to grant a lease to the unincorporated association but would be willing to grant a lease in favour of the registered society, but upon its own terms. These terms include a substantial rent being charged for the occupation of the lands in question, It further insists that not only should the lands be used for the purposes of playing cricket but also for playing football. The unincorporated

association is not willing to relinquish possession and is not willing to accept such, terms. The State Government has asked for possession to be delivered and that is the immediate reason for this application. In connection with the registration of the unincorporated association as a registered society, I have already mentioned that the registration "has been completed in 1951. This gave rise to a schism between the members. I am informed that the Association instituted a suit against the registered Society and obtained a decree, but those proceedings are not in evidence before me. The Union of India has been made a party to this application but it is neither appearing nor contesting the application. The position therefore is somewhat peculiar. The State of West Bengal claims ownership over the lands. The Union of India has not abandoned its claim, but does not come forward in these proceedings either to "substantiate its claim or to admit the claim of the State. While the Union seems to be willing to grant a lease upon a nominal rent, the State Government is not willing to do so except on receipt of a substantial rent and upon its own terms.

2. There has been a series of correspondence between the State Government through respondent 2 who was the Secretary to the Government of West Bengal, Home Department, and the unincorporated Association, and finally on 22-12-1954 the following notice was given by the said respondent purporting to act as the Secretary to the Government of West Bengal, to the Honorary Secretary of the said unincorporated Association :

"Referring to the previous correspondence herein I have to state that the National Cricket Club have repeatedly failed and neglected to comply with the requests and demands of the Government of West Bengal in respect of the portion of the Eden Garden now in the occupation of the National Cricket Club.

I am directed to give notice to the National Cricket Club through you, which I hereby do, to quit and vacate the portion of the Eden Gardens In the occupation of the National Cricket Club and to make over quiet and vacant possession of the same to the Government of West Bengal on the expiration of the month of January 1955."

3. This Rule was issued on 31-1-1955 and the respondents were directed to show cause why a writ in the nature of Mandamus should not be issued prohibiting the State of West Bengal and R. K. Mitra from taking possession of lands and structures of the National Cricket Club in the petition mentioned, and why suitable directions and orders should not be given or made by the Court restraining and prohibiting the said respondents from giving effect to the demands contained in the letter dated 22-12-1954 in the petition mentioned, and from taking forcible possession of the lands and structures of the Club, and why such other writ, orders or directions should not be made or given as to the Court may seem just and proper, and why an injunction should not be granted restraining the said respondents from taking possession of the said lands and structures and from interfering with the rights of the Club.

4. I might mention that leave under Order 1, Rule 8 was given and the necessary advertisements were issued.

5. The facts of this case were gone into in very great detail by the learned counsel for the petitioner, but in my opinion, it is not necessary to go into the facts in such detail. I might however mention some of the important ones. It appears that the first draft (p. 24) made out sometime in December 1950, contemplated a lease between the State of West Bengal and the registered Society. The annual rent was the nominal sum of Re. 1/-. On 24-5-1951 a letter was received from the State Government by the Secretary, N. C. O. stating that the State Govt. was pleased to accord permission for the erection of a cricket Stadium (without prejudice) provided it agreed to accept all the terms which the Government of India might ultimately decide to incorporate in the lease proposed to be executed in the matter between that Government and the National Cricket Club. On 28-3-1951 Mr. Pankaj Gupta, the Honorary Secretary of the registered Society wrote to the State Government as follows :

"We are most grateful to you for your according us the necessary permission to start constructing two blocks of Ranji Stadium on the Eden Garden. We agree to accept all the terms which the Government have already laid down and which will toe ultimately decided to be incorporated in the lease proposed to be executed in the matter between the Government of India and our Club."

6. On 13-6-1951 Mr. Pankaj Gupta as the Honorary Secretary of the registered Society, submitted the draft of a proposed lease (P. 35). This purports to be between the President of the Union of India as the lessor and the National Cricket Club, a registered society, as the lessee. In this draft lease the rent is stated to be Re. 1/- nominal. This draft lease however, was not accepted by the State Government. By its letter dated 7-7-1951 (p. 38) certain terms were proposed which were in substantial variation to the previous terms. For example, instead of a nominal rent of Re. 1/- per year, a rent of Rs. 10,000/- per annum was demanded. It appears that discussions took place between the State Government and the registered Society, as a result of which another draft lease was issued by the State Government and forwarded to Mr. Pankaj Gupta, the Honorary Secretary (p. 44). This lease purports to be between the President of India as the lessor and the National Cricket Club, a registered Society, as the lessee. It was to be a lease for 99 years and the amount of rent was left blank. On or about 5-8-1952 Mr. D. K. De purporting to act as the acting Honorary Secretary, sent to the State Government a draft lease (p. 54). This draft lease purported to be between the President of India as the lessor and the National Cricket Club, a registered Society. The rent mentioned was Re. 1/- only. By this time an important point had cropped up, namely, as to whether the Stadium was going to be merely a cricket Stadium or a composite Stadium for cricket and football, the State Government being firmly of the opinion that it should be a composite Stadium, a view not shared by the association. I am informed that Mr. D. K. De was acting Honorary Secretary of the unincorporated Association. I do

not see how he was carrying on correspondence or acting in the matter, because the draft lease itself purported to be between the Union and the registered Society. It appears however that the draft lease that was sent by Mr. De was not found suitable, and on 8-4-1953 a draft lease was sent by the State Government (p. 61). This draft lease purported to be between the President as the lessor and the National Cricket Club, a registered Society. The rent was specifically stated to be Rs. 10,000/- per annum and the Stadium was to be a composite Stadium. This was followed by another draft lease on similar lines (p. 67), although it is not clear when this last draft lease was sent. By this time the two main objections appear to have come to a head, namely, rent to be paid by the lessee and as to whether the Stadium was to be a cricket Stadium or a composite Stadium. Upon these two points neither party is prepared to yield. It will be observed however, that the picture is by no means a clear one. The draft leases sent by the State Government (except one) themselves show that the State Government was proceeding on the footing that the land was vested in the Union, and yet it felt itself at liberty to impose terms not insisted upon by the Union Government. The draft leases without exception show that the lessee was to be the registered Society and yet at a certain stage the correspondence was being handled by the unincorporated Association. To heighten the confusion came the letter dated 8-3-1951 from the Government of India, which I have already referred to above, stating that Government of India had no objection to the site being leased to the National Cricket Club on an annual rent of Re. 1/- (nominal), for the erection of the cricket Stadium. In other words, the Union of India is stated to be willing to lease the grounds for a cricket Stadium at a nominal rent, thus conceding all the demands of the unincorporated Association. From these facts merge the following :

- (a) The Union Government claims that the land etc. are vested in the Union.
- (b) The State Government, until the making Of this application, admitted the title of the Union Government but have now receded from it, and claims title in the State Government.
- (c) The Union Government is willing to execute a lease in favour of the unincorporated Association for the purposes of a cricket Stadium at a nominal rent of Re. 1/- per annum.
- (d) The State Government is not willing to execute any lease in favour of the unincorporated Association.
- (e) The State Government is willing to execute the lease in favour of the registered Society, for the purposes of a composite Stadium at a rental of Rs. 10,000/- per annum.
- (f) None of the parties have instituted any proceedings for the adjudication as to the title.
- (g) Although the entire negotiations were on the footing that the registered

Society would be the lessee, it seems to have dropped out at a certain stage and the unincorporated Association appears to be in possession.

7. The correspondence shows that there were prolonged negotiations between the State Government and the President of the unincorporated Association, but unfortunately the matter could not be adjusted, and finally there was the notice given on 23-12-1954 on behalf of the State Government which has been quoted above.

8. The main ground on which this application has been made, as formulated by Mr. Sanyal who has argued the case with great ability on behalf of the petitioner, is as follows : He argues that the right to hold possession of land is a right of property which comes within the fundamental rights granted under Article 19(1) (f) of the Constitution. Where parties are other than the Government of the country, the question of fundamental rights does not come into the picture. Or, in other words, the adjustment of rights to property between citizen and citizen must be governed by the ordinary laws. Where, however, Government is a party, the question comes in of the the fundamental rights guaranteed by the Constitution. It was only where the Government was a party that it was necessary to guarantee such rights to the citizen, in the Constitution. He says that the property belongs to the Union and it is amply clear that the State has admitted that right, having submitted a number of leases proposing the President of India to be the lessor. Nevertheless, it has given notice to the petitioner to vacate the premises and it is apprehended that forcible possession will be taken. Mr. Sanyal argues that where the State is a party and has the means of taking possession by a show of force, the citizen has no other means of protection other than invoking the powers of this Court for the issue of a high prerogative writ to stop the Government taking the law into its own hands. He points out that if the police come and take possession by force, it would be impossible for the unincorporated Association to maintain its possession. Mr. Sanyal then refers to Article 31 and points, out that under Clause (1) of Article 31 no person was to be deprived of his property save by authority of law. Thus, the attempt on behalf, of the State Government to deprive the unincorporated Association forcibly and without authority of Jaw, was contrary to Article 31 and must be restrained. Mr. Sanyal further argued that it has been held by the Supreme Court that the words "authority of law" in Article 31(1) mean statute law. Thus, it comes to this that no person was to be deprived of his property save by enacting a law for that purpose, or by virtue of the provisions of any law so enacted, and in conformity thereto. He says that no such statutory law is in existence.

9. The stand taken by the learned Advocate-General on behalf of the respondents is as follows : He admits that the State Government was in the past proceeding on the footing that the property had vested in the Union. He says that this was an erroneous view and the State Government had now realised the true position in law, namely, that the lands had vested in the State Government.

In support of the proposition that this construction is not frivolous he says that under the law, lands which were used for the purposes of the State Government vested in the State Government and he argued that it was common knowledge that the Eden Gardens, including the portion in question, was not being used for the purposes of the Union but for the purposes of the State Government. He then proceeds to argue that the State Government, claiming a right, has served a notice to quit on the person in possession. He finds nothing illegal in it and in fact says that it is the only thing that the State Government can do. Where the State Government is going to acquire property for public purposes, that is another matter, and comes under Article 31. Where, however, the State Government is the owner of a property, that is to say, is the landlord, it is in no different position with regard to property than any other citizen. Supposing the State Government owns a house which is let out to tenants, can it be argued that the right of the tenant is not a contractual right but a fundamental right? Here, he argues, the State Government may be right or wrong in its view as to its own title. All that it has done is to claim title and to give notice to quit on the person in possession. It has not taken any action which is contrary to law and therefore, how can a high prerogative writ issue? As an extreme example he said that if a Government official chooses to beat his wife, is it to be said that the proper remedy is to prohibit him by a high prerogative writ? Undoubtedly, the ordinary law must be invoked. Lastly he says that a landlord in taking possession of land is entitled at his own risk to use a reasonable amount of force. He points out that no threat for using force has ever been made, but even if it was put forward, that by itself would not be illegal.

10. The argument put forward by the learned Advocate-General is a formidable one and I must carefully consider the implications thereof. Coming now to the argument of Mr. Sanyal, the first case cited by him is the Supreme Court decision *Wazir Chand Vs. The State of Himachal Pradesh*, (A). The facts in this case are as follows : T. N. was running a business in Chamba in Himachal Pradesh for the collection etc. of medicinal herbs. He was a partner of a firm which carried on business at Jammu in timber. According to T. N. the business in Chamba was his exclusive business with which the partnership firm in Jammu had no concern. P. D., one of the partners, however claimed that the Chamba business was part of the partnership business. On 3-4-1951 P. D. lodged a report with the police at Jammu that T. N. had prepared duplicate accounts for production before the Income Tax Authorities and had committed an offence of embezzlement u/s 406, I. P. C. The Jammu and Kashmir police took cognisance of the case and appointed a Sub-Inspector of Police to make investigation. During the investigation the Jammu police came to Chamba on 25 and 26-4-1951 and with the assistance of the Chamba police seized 269 bags of medicinal herbs, then in the possession of W. C., the elder brother of T. N. without reporting to, or obtaining orders from any Magistrate or other competent authority. In the first week of July 1951, the Chamba police, again at the instance of the Jammu police, seized 25 bags of dhup from the possession of W. C. W. C. then made an

application under Article 226 of the Constitution before the Judicial Commissioner of the State of Himachal Pradesh at Simla for the issue of a writ in the nature of Mandamus directing the respondents to release the seized goods. The application was rejected. It was held by the Supreme Court that the appeal must be allowed because in order to determine the legality of the seizure and to determine the point whether there had been any infringement of the petitioner's fundamental rights, it was not necessary to determine the true nature of the title in the goods seized. The determination of the question whether W. C. had obtained possession fraudulently was not relevant to this enquiry. 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 provisions of law, a writ of Mandamus should be issued directing the restoration of the goods so seized. Mahajan C. J. said as follows :

"It was contended before us that the learned Judicial Commissioner was in error in thinking that in order to determine the legality of the seizures and to determine the point whether there had been any infringement of the petitioner's fundamental rights, it was necessary to determine the true nature of the title in the goods seized and that the petitioner should not be granted any relief till he was able to establish this. It was argued that the goods having been seized from the actual possession of the petitioner or his servants, the Chamba concern being admittedly under the exclusive control of Triloknath or Wazirchand, the determination of the question whether Wazirchand had obtained possession fraudulently was not relevant to this enquiry, 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 provisions of law, a writ of Mandamus should be issued directing restoration of the goods so seized. It seems to us that these contentions are well founded. The Solicitor General appearing for the respondents was unable to draw our attention to any provision of the Code of Criminal Procedure or any other law under the authority of which these goods could have been seized by Chamba police at the instance of the Uammu police. Admittedly these seizures were not made under the orders of any Magistrate The Chamba police was not authorised to investigate the offence regarding which a report had been made to the Jammu and Kashmir police. It is doubtful whether in view of the provisions of Article 37 of the Constitution any offence committed in Jammu and Kashmir could be investigated by an officer in charge of a police station of the Himachal Pradesh. The procedure prescribed by the Section was not followed. The Jammu and Kashmir police had no jurisdiction or authority, whatever to carry out the investigation of an offence committed in Chamba in Himachal territory without the authority of any law or under the orders of any Magistrate passed on the authority of any law..... The whole affair was a hole-and-corner affair between the officers of the Kashmir Police and of the Chamba police without any reference to any Magistrate. It is obvious that the procedure adopted by the Kashmir and 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."

11. The learned Advocate-General does not dispute, as in fact he cannot dispute, the principles laid down in this decision. He says that if the Government by itself or through the police took any action in depriving a citizen of his property without authority of law or contrary to the provisions thereof, then, if it is an invasion of the fundamental rights, Article 226 can clearly be invoked. He says however, that the State Government, in this instance has not taken any action beyond serving a notice to quit. If it claims a right to the property, it has a right in law to serve a notice to quit upon the person in possession, it cannot be said that this action is without the authority of law. He concedes that if this is followed up by the police forcibly taking possession, a course of action which is not warranted by the criminal laws of the country, such action can be restrained or remedied by high prerogative writs. Mr. Sanyal admits that no further action has been taken but he said that the respondents have threatened to use force. He relies on a statement made in the petition in para 26 wherein it is clearly stated that the State of West Bengal intended to take forcible possession of the said land and other property of the Club situate at Eden Gardens after the expiration of June 1953, which statement has not been denied by Mr. R. K. Mitra who has filed the affidavit in opposition. It is unfortunate that this allegation was not specifically denied, but the learned Advocate-General states that in the absence of an allegation as to who on behalf of the State Government intended to do so, it was not possible to deny this allegation. Furthermore, he says that the entire correspondence is before the Court and nowhere therein has it been stated that there was an intention to take forcible possession. He says that possession may be taken in various ways. For example, it may be taken while the property is left unprotected, which, according to him, would be perfectly legal. It is certainly true that nowhere in the correspondence or the documents disclosed has it ever been stated on behalf of the State Government or anyone else that possession was going to be taken forcibly. No case has been made that any one excepting Mr. B. K. Mitra was dealing with the matter and there is no allegation that any verbal threat was issued apart from what appears in the correspondence.

12. The real position is clear enough. The State Government has not said in so many words that force will be used to dispossess the unincorporated Society, but the petitioner apprehends that force may eventually come to be used. The learned Advocate-General did argue that a mere threat of force is not enough. If however this signifies that a person enjoying a fundamental right must always wait until there is an actual invasion of his rights, I cannot subscribe to such a view. It would be impossible to lay down the proposition that a citizen must wait until the police or military arrive and throw him out. But the point raised in this case goes much deeper than that. The question is whether in this case a fundamental right is at all involved. It is obvious that the fundamental right of

holding property is to guarantee such a right to the citizen against the State. As between individual citizens, any invasion of such a right can be set right by the ordinary law. Article 19 grants rights to the citizen and not to the State. But this does not preclude the State from holding property, and when the State holds property, it exercises all rights relating thereto, as are given by law. In such a case, the provisions of Article 31 do not come to be considered. Article 31 relates to the compulsory acquisition of property by the State, and lays down limitations thereto. Such an acquisition must be for a public purpose and for compensation. In the present case however, we are not considering the question of a compulsory acquisition of property by the State. We are considering the rights of the State in respect of its own property, or at any rate, property which it claims to be its own. I do not see how in such a case, the provisions of the Constitution come into play at all. The State like any other citizen claims a property to be its own, and finds a person in occupation. What then should it do, if it wishes to gain possession.? It must take the same steps as an ordinary citizen should take, unless of course there are special laws governing the case e.g. the Crown Grants Act etc. From this point of view, the service of a notice to quit or a notice to give up possession is perfectly valid. In fact, it is the only proper thing to do. On the record, we find that this is all that the State Government has done so far.

13. Then we come to the question of the threat to take forcible possession. Firstly, no such threat appears anywhere on the record. Secondly, in such a case, a reasonable amount of force may be used at the risk of the landlord. In -- *State of West Bengal Vs. Birendra Nath Basunia and Others*, (B), Chakravartti C. J. has held that where a right to re-enter has arisen to an owner of land, he may enter upon the land by force if necessary : See -- "*Hemmings v. Stoke. Poges Golf Club Ltd.*", (1920) 1 KB 720 (C). Where the person in possession is a trespasser he has no cause of action against the owner, merely because the entry is forcible. Of course, the person using force does it at his own risk. If it is found later on that the right to possession did not exist, there might arise all kinds of civil or criminal liability. In order therefore to grant relief to the petitioner in this case I shall have to conclude that not only was force intended to be used, but such force was going to be in excess of the rights which the State Government had, if its claim to ownership of the property was well founded. I do not see how such conclusions would be justified upon the evidence upon record. The case of "*Wazirchand v. State of Himachal Pradesh* (A) (supra)", can be readily distinguished. In that case, there was no question of the State exercising its own right to property. If the State, in exercise of its police powers, acts without the authority of law and thus effects or interferes with the right to property of a citizen, he can undoubtedly come to court for preservation of an invasion of his fundamental right to hold and enjoy property. But where the State purports to exercise its own right, of property, then the ordinary law applies and I do not see how the remedy of a high prerogative writ is available. In such a case, not only is such a procedure inappropriate but highly inconvenient. For example, in these proceedings I cannot adjudicate the title. I do not know

whether the ownership lies in the State Government or the Union. In fact I cannot conveniently adjudicate upon any of the complicated questions raised, as indicated above. Mr. Sanyal says that he cannot file a suit because it means notice u/s 80, C. P. C., and there will be no protection to the petitioner or his association meanwhile. I must point out that this application was preceded by another of a similar kind and the petitioner there withdrew the application and there was plenty of time to serve notice u/s 80, C. P. C.

14. I think this is a convenient place to consider two other decisions cited by Mr. Sanyal. The first is -- " Virendra Singh and Others Vs. The State of Uttar Pradesh, (D). In 1948, the rulers of Sarila and Charkhari granted certain villages to the petitioners. These rulers were originally independent States acknowledging paramountcy of the British Crown. After Independence of India they acceded to the Dominion and later became a part of the United States of Vindhya Pradesh in 1949 there was merger and the United States of Vindhya Pradesh ceased to exist and became a Chief Commissioners Province. These villages were however taken out of the province and absorbed into the United Provinces (Now Uttar Pradesh). On 29-8-1952 the Governor of Uttar Pradesh passed an order confiscating these lands. It was held that at that stage no "Act of State" could be exercised, and the confiscation which was not grounded on any authority of law was wholly illegal. The decision however turns on the question as to whether an "Act of State" could be exercised after a territory has been integrated with the Indian Union. That does not throw any light on the questions we have to determine in the present case. The State has not purported to do any act which might be characterised as an "Act of State". If for example the Governor of West Bengal attempted to confiscate lands in the possession of the petitioner or his Society by an executive fiat, that would be a different thing and would at once call for intervention. But here, what has been purported to be exercised is an ordinary right under, [the ordinary law. Whether the right has been properly exercised or not is another matter --but it is a question that can easily be determined by recourse to the ordinary law. No recourse to Article 226 of the Constitution appears to be justified. I The next case cited is -- " The State of Rajasthan Vs. Rao Manohar Singhji, (E). In the newly formed State of Rajasthan certain ordinances were passed whereby some Jagirdars were prevented from realising rents whereas other Jagirdars were not subjected to any such disability. It was held that this was an unjustified discrimination and the ordinances were bad. I am not clear why this case was cited at all. So far as I recollect, Mr. Sanyal wanted to make the point that actual dispossession was not necessary and any law, ordinance or executive fiat which threatened to affect the property rights of a citizen would at once confer a right to challenge the same in & Court of law. I am in favour of this proposition enunciated by Mr. Sanyal and therefore it is unnecessary to consider authorities,

15. It seems however clear to me that the remedy to which a citizen is entitled must necessarily depend upon the facts of each case, -- the legal status of the parties, their respective legal rights and the nature of the invasion of such rights.

I have delineated above, the exact situation that has arisen in this case. The unincorporated Society is in possession of some lands. The State Government claims to be the owner of the land and has given notice to the Society to give up possession. On the record, there exists, no threat of executive action and no executive action has yet been taken. The rule calls upon the respondents to show cause why a writ of mandamus should not be issued prohibiting respondents 1 and 2 from taking possession of the lands and structures of the N. C. O. or from giving any effect to the demand contained in "the letter dated 22-12-1954, or from taking forcible possession or interfering with the rights of the said club. If the State Government puts forward a claim to the land in question, I do not see why I should prevent it either from doing so or from taking any steps in order to recover possession. I cannot, in these proceedings, adjudicate the title, so it would be oppressive to put obstruction in the way of anybody claiming the title or enforcing his rights of property. As regards the use of force, I have already pointed out that the record does not show that there has been any threat of the use of illegal force. I have already discussed how in the circumstances the law permits, the use of a certain amount of force. Even if I come to the conclusion upon the affidavits that the State Government is not ruling out the possibility of the use of force, I have no means of saying that it would use force in excess of what the law permits. It is sufficient to dispose of this application by holding that on the facts put before me, and at this stage, the petitioner has not been able to establish any grounds for the issue of a high prerogative writ or any order and direction under Article 226 of the Constitution. Mr. Sanyal has laid great stress on the fact that the action that is contemplated by the State Government, is "executive action" without any authority of law behind it. He argues that Article 31(1) lays down that no person shall be deprived of his property save by authority of law. He says that this has been interpreted by the Supreme Court as meaning Statute Law : -- *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, (F). He says that there is no statute law of any description by which his clients can be forcibly ejected by executive action. He then cites the case of -- "*Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, (G), where it was pointed out that an order purporting to emanate from the State Government itself, served on the respondent by a responsible officer, is of such a nature that it "prima facie" compels obedience as a matter of precaution and although it may in the end prove ineffective, it would be wrong to expect a person on whom it is served to ignore it at his peril however much he may be legally entitled to do so. On the other hand, the learned Advocate-General has cited the decision of -- *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, (H), where it has been held that Articles 73 and 162 of the Constitution do not contain any definition as to what the executive function is, and what activities would legitimately come within its scope. The language of Articles 73 and 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which the legislation has been passed already. These are however weighty considerations which in my

view do not arise to be considered on the facts of the present case. What is the executive action, that is complained of in this case? The State Government claiming title to a property has asked the person in occupation to give up possession. If this is "executive action", then every act of ownership exercised by the State, even within the four corners of the law will be "Executive Action" and subject to high prerogative writs.

16. In the Full Bench case of -- " Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, (I), Mallick C. J. said:

"The State is entitled to hold property and "business" can mean management of the property on putting it to such use as might yield Income. There is no reason why the State should not have the right to manage its own property and carry on such trade or business as a citizen has the right to carry on so long as such activity does not encroach upon the rights of others or is not contrary to law".

This view was accepted by Mukherjea C.J. in Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, (H). Here, the State is claiming a right to property and attempting to manage it in a way it thinks would be desirable and remunerative. " It has so far done nothing which could be stated to be prima facie a violation of any law. According to the State Government there can be no question of encroaching upon the rights of the petitioner and his unincorporated association; because in its opinion, they have no right at all and are mere trespassers. If the service of the notice to quit is at all an "Executive action", it is an action which is still within the precincts of the law and I am unable to construe it as a threat that law will be violated. That being so, this application must necessarily fail and be dismissed. The rule is discharged and all interim orders vacated. There will be no order as to costs. Since the petitioner wishes to appeal, the operation of this order will be suspended for a period of four weeks, but any further stay must be obtained from the Court of appeal. This order will be entirely without prejudice to the rights of the petitioner to take such legal proceedings as he may be entitled to and is entirely based on the facts that have happened up-to-date.