

(1994) 01 CAL CK 0018

In the Calcutta High Court

Case No : First Miscellaneous Appeal Tender No. 920 of 1991 heard analogously with F.M.A.T. No's. 921 and 922 of 1991

Executive Engineer, Public Works Department

APPELLANT

Vs

Banalata Investment Pvt. Ltd.

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Civil Service Ordinance, 1944 — Section 13, 2, 4, 6, 6A

Constitution of India, 1950 — Article 14, 226

Government of India Act, 1935 — Section 88

Land Acquisition Act, 1894 — Section 16, 18

Land Acquisition Act, 1981 — Section 18

West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 6A

Citation : (1994) 1 ILR (Cal) 270

Hon'ble Judges : Paritosh K. Mukherjee, J;Altamas Kabir, J

Bench : Division Bench

Advocate : P.K. Das, A.B. Chatterjee and Anandi Banerjee, for the Appellant;P.K. Ghosh and Jahar Lal De, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—These three appeals are being heard together as they arise out of the self-same order passed by the learned trial Judge and involve common questions of fact and law. In fact, the three stay applications filed in these appeals are also being heard along with the appeals.

2. In order to better appreciate the stand taken on behalf of the respective parties, it would be necessary to briefly set out the facts which led to the filing of the writ petitions giving rise to these appeals.

3. The Respondents Nos. 1 and 2 in F.M.A.T. No. 920 of 1991, M/s. Banalata Investment Pvt Ltd. and Sm. Indrani Chatterjee, claim to have been inducted as tenants in respect of the out-house at premises No. 62, Syed Amir Ali Avenue, Calcutta, by one Mr. V. C. Sood, who, according to them, is an original tenant of the said premises.

4. The Respondent No. 1 in F.M.A.T. No. 921 of 1991, M/s. Good Luck Tyres & Automobiles, claims to be a partnership concern, with the Respondent No. 2 as one of its partners. The Respondent No. 2 claims to have obtained a tenancy initially in respect of one room in the ground floor of the aforesaid premises in 1975 from the owner/landlord in the name of M/s. United Motor Accessories & Cycle Co., which name was alleged to have been subsequently changed to M/s. Good Luck Tyres.

5. The Respondent No. 1 in F.M.A.T. No. 922 of 1991, M/s. Volcon Refrigeration, claims to be a partnership firm with the Respondent No. 2 as one of its partners. The Respondent No. 1 claims to have been inducted as a tenant in respect of one room in the ground floor of the aforesaid premises by the owner thereof, on the basis of an Agreement of Tenancy dated May 2, 1987, with one Mr. Shubir Kumar Ghosh, son of late Shottayendra Kumar Ghosh I.C.S.

6. All the above-mentioned Respondents claim to be carrying on their respective businesses from the time of their entry into the aforesaid premises. It is the common grievance of the Said Respondents that on March 19, 1991, at about 1 p.m., the Executive Engineer-I, Public Works Department, Suburban Division, and the Law Officer, Public Works Department, accompanied by the Officer-in-Charge, Karaya P.S., came to their premises and asked them to vacate the same and to remove all their articles therefrom. According to the Respondents, the said officers could not produce any paper or order of any competent authority in support of their said demand, despite the requests of the Respondents requiring them to do so.

7. M/s. Banalata Investment Pvt. Ltd. thereupon moved a writ application on March 19, 1991, itself, making M/s. Volcon Refrigeration a party therein. A learned Judge of this Court restrained the Appellants herein from taking possession of the writ Petitioners' office and place of business at 62, Syed Amir Ali Avenue, Calcutta, and from disturbing the writ Petitioners' possession therein, without the leave of the Court.

8. It appears that on the self-same day, the Appellants herein locked and sealed the door of the writ Petitioner's premises, resulting in a contempt application being moved on March 20, 1991. The learned trial Judge directed the Officer-in-Charge, Karaya P.S., to take possession of the Petitioner's premises, by breaking open the padlocks, if necessary, and to make an inventory of the articles, which were said to be lying inside the said premises, with the help of Mr. S. P. Ghosh, an Advocate who was appointed as Special Officer.

9. On March 27, 1991, M/s. Good Luck Tyres and Good Luck Automobiles moved a separate writ application praying for the self-same reliefs as prayed for in the earlier writ application of M/s. Banalata Investment Pvt. Ltd. A writ application on similar grounds was also moved by M/s. Volcon Refrigeration. The contempt application filed by M/s. Volcon Refrigeration was also taken up by the learned trial Judge on the same day and the State Respondents were directed to deliver

back possession of the respective portions of the writ Petitioners which they used to enjoy on or before March 18, 1991, in the presence of the Special Officer, subject to the result of the writ petition. The said order was directed to govern the wrk applications of M/s. Banalata Investment Pvt. Ltd. and M/s Good Luck Tyres as well.

10. These three appeals have been preferred against the aforesaid order of the learned trial Judge dated March 27, 1991.

11. Appearing on behalf of the Appellants, Mr. P. K. Das firstly submitted that in the absence of any legal right, the writ Petitioners were not entitled to maintain the writ applications filed by them. Amplifying his submission, Mr. Das submitted that the writ Petitioners had no legal right in respect of the portions of the premises which were in their possession.

12. Referring to the averments made in para. 2 of the writ application of M/s. Banalata Investment Pvt Ltd., Mr. Das submitted that the writ Petitioners therein claim to have been inducted as tenants in the premises in# March 1990, by one Mr. V. C. Sood, who was himself alleged to be a tenant therein. Mr. Das urged that nothing had been disclosed in the said writ petition in support- of Mr. Sood's alleged tenancy in the premises.

13. Mr. Das then referred to the averments"made in para. 2 of the writ petition of Good Luck Tyres, wherein it has been claimed that the writ Petitioner No. 3 took tenancy of one room in the ground floor of the premises from the owner/ landlord in 1975. Mr. Das pointed out that not even the name of the owner/ landlord had been disclosed in the writ petition.

14. Mr. Das submitted that in the third writ petition M/s. Volcon Refrigeration claimed to have entered into an Agreement of Tenancy on May 2, 1987, in respect of a shop-room in the premises with one Shubir Kumar Ghosh, who was described therein as owner thereof.

15. In support of his contention that the writ Petitioners had not acquired any legal right in the premises, Mr. Das submitted that premises No. 62, Syed Amir Ali Avenue, Calcutta, formerly belonged to one S. K. Ghosh, since deceased. In view of certain financial irregularities said to have been committed by the said S. K. Ghosh, a member of the. Indian Civil Service, an Ordinance (No. 38 of 1944) was promulgated u/s 88 of the Government of India Act, 1935. Mr. Das submitted that on November 2, 1944, and February 22, 1945r the learned District Judge, 24-Parganas, attached the properties of S. K. Ghosh and his wife in exercise of his powers under Sections 4 and 6 of the aforesaid Ordinance.

16. It appears that criminal proceedings were started against the said S. K. Ghosh and he was convicted for embezzlement of large sums of money belonging to the Government of India. Mr. Das submitted that the said conviction was upheld by the Supreme Court on December 12, 1956.

17. Mr. Das then submitted that in 1957 an application was made by the State

Government to the learned District Judge, 24-Parganas, u/s 13 of the aforesaid Ordinance for forfeiture of the sum of Rs. 30 lakhs which S. K. Ghosh was found to have embezzled. An order of forfeiture was passed on the said application, which was upheld by the Supreme Court.

18. Mr. Das submitted that the attached properties of Sri S. K. Ghosh, including 62 Amir Ali Avenue, Calcutta, were valued at Rs. 47,37,000 by the learned District Judge, and the State Government sought permission from the learned District Judge to acquire the property on payment of the said amount. Such prayer was allowed, and the entire amount was deposited by the State Government in Court by cheque on July 12, 1962.

19. According to Mr. Das, a proceeding was initiated by the State Government in 1961 for acquisition of the properties of Sri S. K. Ghosh, including premises No. 62 Amir Ali Avenue, Calcutta. Sri Ghosh filed a writ petition challenging the said proceedings on the ground that such proceedings could not be initiated while the properties were under attachment. Mr. Das submitted that on April 22, 1977, this Court in appeal held that the acquisition proceedings were, valid in law.

20. The aforesaid proceedings were completed in 1982 in respect of the properties of Sri S. K. Ghosh, including premises No. 62 Amir Ali Avenue, Calcutta. On October 8, 1982, the concerned authorities issued notice in Land Acquisition Case No. D-3 of 1963-64 to the owner for handing over vacant possession of premises No. 62 Amir Ali Avenue, Calcutta. The said notice was challenged in a writ proceeding, being CD. No. 13688(W) of 1982, by Sm. Malina Ghosh, widow of S. K. Ghosh, who had died in the meantime. The said Rule was discharged and the order of the learned trial Judge was upheld in appeal.

21. Mr. Das urged that, in view of the dismissal of the writ petition of Sm. Malina Ghosh, the authorities became entitled to take possession of the entire premises being No. 62 Syed Amir Ali Avenue, Calcutta.

22. It is also the case of the Appellants that the State Government obtained a licence/tenancy from the learned District Judge in respect of the ground floor of premises No. 62 Syed Amir Ali Avenue, Calcutta, during the pendency of the Land Acquisition proceedings. Such tenancy comprised of the entire ground floor including the vacant land and the out houses of the premises. Having obtained such licence/tenancy, the State Government allotted the said ground floor, including the out houses, firstly, to Puru-sottam Chatterjee J. in 1962 and, thereafter, to Lt. Colonel D. N. Chakraborty. It is also the case of the Appellants that D. N. Chakraborty vacated the premises and handed over possession thereof to the State Government on December 5, 1983.

23. Mr. Das urged that on the self-same date the Land Acquisition Department handed over possession of the entire premises, together with all the structures, to the Public Works Department, and since then the entire ground floor of the premises, including the out-houses, came to be in the possession of the Public Works Department. It is also the case of the Appellants that the ground floor of

the premises, including the out-houses, were being occupied by unauthorised persons and the Government decided to remove them, which it did on March 19, 1991, and recovered possession of the portions under unauthorised occupation and placed the same under lock and key by 4 p.m.

24. Mr. Das submitted that it was only after the possession of the said portions had been taken from the unauthorised occupants that the authorities and the State Government came to learn of the interim order which had been passed on March 19, 1991, since the same had been moved without notice to the Respondents.

25. In this behalf, Mr. Das referred to a copy of the Certificate of Possession dated December 5, 1983, being Annex, "A" to the application for stay, filed in F.M.A.T. No. 922 of 1991.

26. Mr. Das pointed out that the possession of the premises was received by the Surveyor and Valuer, Land Acquisition Office, Calcutta, from one Sri Haripada Pal acting on behalf of Lt. Colonel D. N. Chakraborty, and that simultaneously possession was handed over to the Public Works Department through its Work Assistant. Mr. Das also referred to a letter addressed by the Executive Engineer-I, P.W.D., Suburban Division, to the Deputy Secretary-II, P.W.D., on March 19, 1991, being Annex. "B" to the aforesaid application. Mr. Das pointed out that in the said letter it was categorically stated that the process of recovering possession from the unauthorised occupants began at 12 noon on March 19, 1991, and the said process ended at 4 p.m. with the help of the Officer-in-Charge, Karaya P.S.

27. In support of his aforesaid contentions, Mr. Das relied on the decision of the Supreme Court in the case of the State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, wherein the Supreme Court observed that, although the jurisdiction of the High Court under Article 226 of the Constitution is very wide, it could only be invoked by a party who could establish that he had a legal right and that such right had been illegally invaded or threatened. Accordingly, a person without having any legal right, would not be entitled to protection of his right of possession by way of a proceeding under Article 226 of the Constitution.

28. In this connection, Mr. Das also relied upon a decision of our Court in the well-known case of the The Corporation of Calcutta and Others Vs. Dharendra Nath Sen and Others, . Commonly known as the "Dhapa case", it was observed therein by the Division Bench that if a local authority in assertion of its property rights dispossessed a person, without recourse of law, such person, if found not entitled to remain in possession, was not entitled to any relief under Article 226 of the Constitution. Mr. Das pointed out that the decision of the Division Bench of this Court followed the earlier decision of the Supreme Court in the case of State of Orissa v. Ram Chandra Dev(Supra).

29. In further amplification of his submission that a trespasser was not entitled to maintain a writ application, Mr. Das submitted that in respect of any

Government premises, unless any authority or document could be produced by the person in occupation entitling him to occupy the same, the Government was empowered to eject him therefrom without any notice and by force if necessary.

30. In this connection, reference was also made to two decisions of this Court in the case of *In re. Community Services Society and Ors.* 87 C.W.N. 1095 and *M/s. Murray and Co. Pvt. Ltd. Vs. Board of Wakfs and others*, wherein much the same things have been observed.

31. Mr. Das urged that having regard to the fact that the premises in question undoubtedly belonged to the State Government on account of the acquisition proceedings referred to above, the learned trial Judge ought not to have directed restoration of status quo ante, particularly when the occupants had not been vested with any legal right by the State Government to be in occupation of the premises in question. Mr. Das urged that in view of the consistent view both of this Court and the Hon'ble Supreme Court with regard to the right of a trespasser to invoke the writ jurisdiction of the High Court to maintain his possession, the learned trial Judge ought not to have entertained the writ application and should have dismissed the same at the very initial stage in the absence of any legal right being disclosed by the writ Petitioners/Respondents. Mr. Das contended that since possession had already been taken by the Appellants before the order of the learned trial Judge was communicated to the Appellants, the learned trial Judge ought not to have directed restoration of possession without holding any enquiry as to whether such possession had been lawfully taken by the State Government. Mr. Das urged that the balance of convenience and inconvenience should have been exercised by the learned trial Judge in favour of the Appellants, since possession had already been taken over by the appellants.

32. Having regard to the stand taken by the writ Petitioners that they had been forcibly dispossessed without even any notice having been served on them prior to such dispossession, Mr. Das lastly submitted that the said writ Petitioners/Respondents were not entitled to any notice, as claimed by them, and that service of notice was nothing but a mere formality. Mr. Das submitted that this was more so when the concerned party had no legal right to be in occupation of the premises in question.

33. Mr. Das then referred to the provisions of the West Bengal Government Premises (Tenancy Regulation) Act, 1976.

34. Referring to the definition of "Government Premises" Mr. Das submitted that the same is defined in Section 2(a) of the above Act, which reads as follows:

2(a). "Government Premises" means any premises which is owned by the State Government or by a Government undertaking but does not include official residence of any person authorised to occupy any premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being.

35. Mr. Das then referred to the provisions of Section 6A of the above Act which reads as follows:

6A. (a) The prescribed authority, or any officer authorised by it in this behalf, may take such steps and use such force as may be necessary to take possession of the premises and may also enter into the premises for the said purpose; and

(b) Such person shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

36. Mr. Das submitted that the steps taken to recover possession of the portions under unauthorised occupation, was justified in view of the aforesaid provisions.

37. On the question as to whether the premises in question could be said to be a Government premises, Mr. Das referred to and relied upon a decision of this Court in the writ application filed by Sm. Malina Ghosh, widow of Mr. S. K. Ghosh, to whom the aforesaid property initially belonged 1988 (2) C.L.J. 20 Mr. Das pointed out that in the said writ application, the question relating to ownership of the various properties of Sri. S. K. Ghosh, under attachment, was considered. Mr. Das submitted that the land acquisition proceedings in respect of the properties of Sri S. K. Ghosh were challenged by Sri Ghosh under Article 226 of the Constitution in Matter No. 346 of 1967, wherein Sri Ghosh had prayed for a direction upon the State of West Bengal and the Land Acquisition Collector, Calcutta, not to take any further steps in pursuance of the land acquisition proceedings and for quashing the same. It may be mentioned that the said writ application was ultimately withdrawn and another application, being Matter No. 226 of 1969, in respect of one property at Dalhousie Square was moved with similar prayers. The said writ application succeeded up to the appeal stage.

38. Meanwhile, Sri S. K. Ghosh died and his widow Sm. Malina Ghosh filed an application questioning the valuation of the properties and the same was referred on May 11, 1991, by the Land Acquisition Collector to the District Judge, u/s 18 of the Land Acquisition Act, 1981. Subsequently, Sm. Malina Ghosh filed the writ application challenging the validity of the acquisition proceedings which was referred for decision to the Division Bench. While discharging the Rule, the Division Bench held that the Petitioner's challenge of the land acquisition proceedings was barred by the principles of res judicata, in view of the application filed u/s 18 of the Land Acquisition Act, 1894, which showed that on principle she had accepted the validity of the said proceedings.

39. Mr. Das contended that in view of the decision of the Division Bench on the said writ application of Sm. Malina Ghosh, the ownership of the State Government of premises No. 62, Syed Amir Ali Avenue, Calcutta, could no longer be questioned by persons claiming to derive a right in the premises through or under Sri S. K. Ghosh and/or Sm. Malina Ghosh.

40. Mr. Das urged that it was now well established that unless a party had some

semblance of a legal right to continue in possession of a premises, the High Court in exercise of its writ jurisdiction could not protect such possession, as was observed by the Supreme Court in the case of State of Orissa v. R. C. Indrakumar Pvt. Ltd. AIR 1972 S.C 2113

41. Mr. Das also referred to the decision of the Supreme Court in the case of R.S. Dass Ors. Vs. Union of India (UOI) and Others, wherein while dealing with the preparation of a select list for promotion to the Indian Administrative Service, the Supreme Court observed that in the absence of any legal right, no opportunity was required to be afforded, since the rules of natural justice are not right rules but are flexible and their application depends upon the setting and the background of statutory provisions, nature of the right which may be affected and the consequences which may ensue. In other words, the rules of natural justice do not apply to all cases and situations.

42. In this connection, reference was also made to the following decisions of the Supreme Court and this Court, namely, Union of India (UOI) Vs. Col. J.N. Sinha and Another, A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and Gyan Singh Vs. State of West Bengal and Others,

43. Mr. Das urged that having regard to the facts of this case and, in the absence of any legal right of the writ Petitioners to remain in occupation of the portions of the premises in question, namely, 62 Syed Amir Ali Avenue, Calcutta, this was one case where the principles of natural justice could be excluded as observed in the case of R. S. Das v. Union of India(Supra) and that as a consequence no notice was required to be served on the writ Petitioners/ Respondents before steps were taken by the State Government to evict them from such unlawful occupation. Mr. Das urged that no case had been made out by the writ Petitioners to either remain in possession of the premises in question or for being restored to possession in respect thereof and the writ petitions were liable to be dismissed with costs.

44. Appearing on behalf of the writ Petitioners/Respondents, Mr. P. K. Ghosh submitted that the writ Petitioners had been in physical possession of the premises in question on March 19, 1991, when they were forcibly dispossessed therefrom. Mr. Ghosh submitted that even if the said premises was acquired by the State Government, the same would vest to the State only after possession was taken in terms of Section 16 of the Land Acquisition Act, 1894. Mr. Ghosh submitted that since possession had not been taken and the out-house housing the shop-rooms in question had not vested in the State when the Petitioners were forcibly dispossessed therefrom, the Petitioners were entitled to protect their possession supported by the tenancies created in their favour by the heirs of Sri S. K. Ghosh and Mr. V. C. Sood, who were originally tenants of the premises in question. Mr. Ghosh submitted that the writ petitions were, therefore, maintainable and the various decisions cited on behalf of the Appellants in this regard, did not really come to the assistance of the Appellants.

45. Mr. Ghosh then submitted that the out-house which was under the occupation of the writ Petitioners had a separate identity of its own and had no connection with the main building comprising the premises in question. Mr. Ghosh submitted that the tenanted premises of the writ Petitioners/Respondents were independent of the main premises and had separate entrances directly from the road and were, therefore, capable of being separately enjoyed without interfering with the occupants of the main building.

46. Mr. Ghosh then submitted that the concept of asserting a legal right for maintaining a writ application had undergone a change over the years and now an individual aggrieved by any unlawful, arbitrary and/or mala fide act of the State could file a writ petition for undoing such wrong. Mr. Ghosh urged that the concept of legal right had been replaced by the concept of fairness in State action. Mr. Ghosh urged that the State was required to act fairly in all matters and in accordance with law.

47. In this regard, Mr. Ghosh referred to the decision of the Supreme Court in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and in the case of Dwarkadas Marfatia v. The Board of Trustees wherein the Supreme Court observed that non-arbitrariness being a necessary component of the rule of law, it is imperative that all State action in whatever sphere must be guided by reason and should not be in violation of the principles embodied in Article 14 of the Constitution.

48. Reference was also made to the observations made by the Supreme Court in the case of Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, . E.P. Royappa Vs. State of Tamil Nadu and Another, Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

49. In this connection, Mr. Ghosh urged that when the Petitioners' possession was threatened by the State action, without due process of law, the Petitioners had every right to approach this Court in its writ jurisdiction for protection of such possession, since they could not be deprived of the same arbitrarily.

50. In support of his contention that the property under acquisition did not vest to the State till possession was taken u/s 16 of the above-mentioned Act, Mr. Ghosh referred to and relied upon a Full Bench decision of the Patna High Court in the case of State of Bihar Vs. Dr. G.H. Grant and Another, wherein it was held that in a proceeding under the Land Acquisition Act, title to the land did not pass to the State as soon as an award was made and filed, but stood deferred till possession was taken under 16 of the said Act.

51. Mr. Ghosh also referred to a decision of the Supreme Court in the case of Lallu Yaswant Singh v. Rao Jagdish Singh and Ors. AIR 1968 S.C. 620 In the said case, while considering the question of a landlord's right to re-enter land in possession of a tenant whose tenancy had expired, the Supreme Court observed that the landlord was not entitled to forcibly re-enter into the premises in

question and that he would have to approach the Court for dispossession of the tenant.

52. Mr. Ghosh urged that the principle enunciated in the aforesaid decision was also applicable in respect of lands belonging to the State and that a person in possession of land belonging to the State could not be evicted therefrom by force and except in due process of law.

53. Mr. Ghosh also referred to another decision of the Supreme Court in the case of Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, In the said case it was observed that in a proceeding under Land Acquisition Act, 1894, when the Government proceeds to take possession of the acquired land, it must take actual possession of the land u/s 16 of the said act and there can be no question of taking symbolical possession thereof.

54. Mr. Ghosh submitted that having regard to the above, it was not open to the Government to resort to force to dispossess the writ Petitioner, and place the premises in question under lock and key.

55. Mr. Ghosh then referred to the two annexures to the application for stay filed on behalf of the Appellants.

56. Referring to the first annexure, being the Certificate of Possession relating to the taking over of possession of the premises in question, Mr. Ghosh pointed out that in the said certificate it was clearly mentioned that possession had been taken over in respect of the land and the ground floor of the structures situated at premises No. 62, Syed Amir Ali Avenue, Calcutta, which had been acquired for the purpose of office and residential accommodation.

57. Of course, it must also be pointed out that while making his submissions, Mr. P. K. Das also referred to the said Certificate of Possession and had pointed out that possession had been taken over in respect of: the entire premises comprising an area measuring 1 bighu, 1 cottach and 8 chittacks.

58. Mr. Ghosh submitted that it was not the intention of the State Government to take over possession of the outhouse as well, since possession of the said outhouse remained with the heirs of Sri S. K. Ghosh, who subsequently inducted writ Petitioners/Respondents as lawful tenants therein. Mr. Ghosh urged that since possession of the said out-house had not been taken over u/s 16 of the Land Acquisition Act, 1894, State Government did not acquire title to the said land and the same continued to belong to the heirs of the late S. K. Ghosh, who were legally entitled to deal with the same by inducting tenants therein.

59. Mr. Ghosh submitted that the aforesaid position would be corroborated by the second annexure which is a letter written by the Executive Engineer-I, P.W.D. Suburban Division, on March 19, 1991, to the Deputy Secretary-II, P.W.D. Mr. Ghosh submitted that even in the said letter reference was made to taking possession of the ground floor premises and not the out-house as such.

60. Mr. Ghosh pointed out that, in the said letter, the possession of the writ Petitioners/Respondents in the outhouse and the shoprooms therein was clearly admitted.

61. Mr. Ghosh urged that in the event the writ Petitioners/Respondents were considered to be in unauthorised occupation of the shop-rooms in question, the State and the State Respondents had ample powers to evict them from the premises in question under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The State could not resort to force in dispossessing the writ Petitioners/Respondents without taking recourse to the provisions of the aforesaid Act.

62. Mr. Ghosh urged that the provisions of the West Bengal Government Premises (Tenancy Regulation) Act, 1976, referred to on behalf of the Appellants, had no application to the facts of the present case, since the premises in question could not be said to be "Government premises" within the meaning of Section 2(a) of the said Act, having regard to the fact that title to the premises in question had not vested to the State in the absence of possession being taken in accordance with the provisions of Section 16 of the Land Acquisition Act, 1894. Mr. Ghosh urged that it could not, therefore, be contended that, in terms of Section 6A of the 1976 Act, the State Government was entitled to use force to take possession of the shop-rooms under the occupation of the writ Petitioners/Respondents.

63. Looking at the problem from a slightly different angle, Mr. Ghosh lastly submitted that, although a true owner had every right to dispossess or throw out a trespasser, while the trespasser was in the act or process "of trespassing but had not accomplished his possession, such right was not available to the true owner if the trespasser was successful in establishing his possession to the knowledge of the true owner. Mr. Ghosh urged that in such a situation it was no longer open to the true owner to remove the trespasser by force, but he was required to take recourse to legal remedies for the purpose of evicting the trespasser in due course of law.

64. In support of his said submission, Mr. Ghosh referred to the decision of the Supreme Court in the case of Ram Rattan and Ors. v. State of Uttar Pradesh and Ors. AIR 1971 S.C. 619 wherein the aforesaid principles have been explained.

65. Mr. Jahar Lai De, who appeared on behalf of M/s. Good Luck Tyres and Automobiles, adopted the arguments advanced by Mr. Ghosh and contended that when an action on the part of the State prejudiced a private citizen the least that was expected was that the State should act in accordance with the principles of natural justice and should give prior notice and an opportunity of being heard before taking any action in that behalf.

66. Mr. De further submitted that even if the property in question had been acquired by the State Government under the Land Acquisition Act, 1894, the occupants thereof could not be forcibly dispossessed and Mr. Das's submissions

in that regard were liable to be rejected in view of the various decisions of the Supreme Court referred to hereinabove with regard to the duty of the State and the State Respondents to act fairly and without any hint of arbitrariness.

67. Mr. De submitted that the instant appeals were liable to be dismissed and the State and its authorities should not be allowed to disturb the possession of the writ Petitioners/Respondents in the shop-rooms in question, except in due process of law.

68. From the Certificate of Possession dated December 5, 1983, being Annex. "A" to the application for stay filed in F.M.A.T. No. 922 of 1991, it will appear that possession of the ground floor of the premises was made over to the Surveyor and Valuer, Land Acquisition Office, Calcutta, by one Sri Haripada Pal acting on behalf of Lt. Colonel D. N. Chakraborty and that simultaneously possession thereof was made over to the Public Works Department. In the said certificate, no mention has been made of the out-house in which the shop-rooms belonging to the writ Petitioners/Respondents are situated. Since the writ Petitioners were admittedly in possession of the shop-rooms in the said outhouse, it must be presumed that possession of the outhouse as such was not made over by Sri Haripada Pal to the Surveyor and Valuer of the Land Acquisition Office on December 5, 1983. It is nobody's case that the writ Petitioners/Respondents trespassed into the premises after possession thereof had been handed over to the Surveyor and Valuer of the Land Acquisition Office on December 5, 1983.

69. It is, therefore, to be considered whether despite the fact that possession of the out-house was not handed over in terms of the Certificate of Possession, it can be contended that the requirements of Section 16 of the aforesaid Act had been satisfied.

70. There is no dispute that the order of acquisition was in respect of the properties of Sri S. K. Ghosh, including premises No. 62, Syed Amir Ali Avenue, Calcutta, in its entirety. It is also not disputed that the acquisition proceedings were completed in 1982 in respect of all the said properties and the notice given to the owner for making over vacant possession of premises No. 62, Syed Amir Ali Avenue, Calcutta, was challenged in C.R. No. 13688(W) of 1982, by the widow of S. K. Ghosh and that the said Rule was discharged by the Division Bench.

71. In the facts and circumstances of the case the question which emerges is whether by virtue of taking part possession of a portion of premises No. 62, Syed Amir AH Avenue, Calcutta", it could be contended on behalf of the State that the requirements of Section 16 of the Land Acquisition Act were satisfied and that such possession must be held to be in respect of the entire premises.

72. As far as this question is concerned, we have no hesitation in holding that, since possession of the major portion of the premises was taken over by the agency of the State Government, it must be held that the requirements of Section 16 of the above Act were duly satisfied and that title to the entire

property vested to the State Government. Even though the writ Petitioners were allowed to continue in possession of the shop-rooms in the out-house in question, such possession, in our view, did not prevent the vesting of the entire property in the State Government. We cannot, therefore, escape from the conclusion that the entire premises No. 62, Syed Amir Ali Avenue, Calcutta, came to vest in the State Government on and from December 5, 1983.

73. It is altogether another matter as to whether the provisions of the West Bengal Government Premises (Tenancy Regulation) Act, 1976, would have application to the facts of this case, as has been urged on behalf of the Appellants.

74. The aforesaid Act was enacted in order to provide for the regulation of certain incidents of tenancy in relation to "Government premises" in West Bengal and for matters connected therewith or incidental thereto. It is nobody's case that the writ Petitioners/Respondents were inducted as tenants by or on behalf of the State Government. Accordingly, we fail to see how the provisions of the said Act can be extended to the Petitioners who claim to be tenants not of the State Government but of the owners of the property and in one case a sub-tenant of another tenant in the premises.

75. Whether the Petitioners can at all be said to be tenants in respect of the premises under their occupation under the heirs of S. K. Ghosh or under Mr. V. C. Sood, as claimed by the writ Petitioners/Respondents, is not our concern in the appeals before us. However, the consequence of the State Government acquiring title to the premises would be that the continued occupation of the writ Petitioners/Respondents in respect of the shop-rooms, without the sanction of the State Government, was unauthorised.

76. Accordingly, the question of invocation of the powers u/s 6A of the 1976 Act, as urged by Mr. Das, is not acceptable to us.

77. In our view, since the premises was acquired for the use of the State Government, the remedy available to the Appellants would, in fact, be under the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, which lays down a procedure for recovery of possession of public premises under the occupation of unauthorised occupants.

78. Having regard to the above, we are also not inclined to accept Mr. Das's submissions that the State was within its rights to forcibly dispossess the writ Petitioners/Respondents from the shop-rooms under their occupation and we are of the view that the writ Petitioners/Respondents were, therefore, entitled in law to maintain the writ applications filed by them for non-compliance by the Respondents with the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.

79. Consequently, we are also of the view that since the writ Petitioners/Respondents were forcibly dispossessed from the shop-rooms in question,

without due process of law, the learned trial Judge did not commit any error in directing the possession of the said shop-rooms to be restored to them since there was an order of injunction restraining the Appellants from disturbing their possession therein. Whether the said order of injunction had been communicated to the authorities prior to their dispossession, is in our view immaterial, inasmuch as, the writ Petitioners were sought to be dispossessed arbitrarily and without due process of law. In this connection, the views expressed by the Supreme Court in the several cases referred to on behalf of the writ Petitioners/ Respondents regarding fairness of State action, and particularly in the case of Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh are quite clear that any arbitrary or unfair action on the part of the State would be contrary to the provisions of Article 14 of the Constitution.

80. Having regard to the view taken by us, we cannot but hold that the dispossession of the writ Petitioners/ Respondents on March 19, 1991, was arbitrary and without due process of law and we hold further that the learned trial Judge was justified in passing the order dated March 27, 1991, which has been impugned in these three appeals.

81. Since the writ applications are also being heard along with these appeals, we affirm the view taken by the learned Single Judge and direct that the State of West Bengal and its authorities will not disturb the possession of the writ Petitioners/ Respondents in the shop-rooms in question, without taking recourse to the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, or such other legal provisions as may be available to them.

82. The three appeals, therefore, fail and are dismissed and the writ applications are consequently allowed.

83. There will, however, be no order as to costs.

84. Having regard to this order, the Receiver appointed by the learned Single Judge in these three appeals, namely Sri Arabinda Ghosh, is also discharged. It is submitted on behalf of the writ Petitioners that the remuneration of the Receiver has since been paid to him.

85. Let xerox copies of this judgment be made available to the learned Advocates for the respective parties on their usual undertaking.

Paritosh Kumar Mukherjee, J.: I agree.