

(1955) 12 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 34 of 1955

Kishan Chand

APPELLANT

Vs

Competent Authority Bairagarh

RESPONDENT

Date of Decision : 12-12-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 228, 32
Penal Code, 1860 (IPC) — Section 182

Citation : (1955) 12 MP CK 0012

Hon'ble Judges : Mathur, J.C.

Bench : Single Bench

Advocate : U.P. Chogashi, for the Appellant; R.R. Bhambhani, Govt. Advocate, for the Respondent

Judgement

Mathur, J.C.

1. This is a petition under Arts. 228 and 227, Constitution of India, by Kishan Chand for cancellation of the notice dated 18-8-1955 issued by the Competent Authority, Bairagarh (Camp Commandant, Bairagarh), respondent, directing the petitioner to vacate the shop situate in Gandhinagar within a period of 15 days, and to restrain the respondent from evicting the petitioner from the said shop, by issuing suitable writ, order or direction.

2. The petitioner is a displaced person from Pakistan having migrated to the territory of India before July 1948 and is residing in the territory of India since the date of his migration. He is thus a citizen of India. He is a Government sponsored displaced person and was officially brought from Deoli camp to Bhopal sometime in 1948 for rehabilitation at Bhopal.

The then Camp Commandant of Bairagarh allotted accommodation to him at Gandhinagar where he resided in a house and did trade and business in the shop in question. He was granted a loan of Rs. 5,500/- by the Rehabilitation Finance Administration for the cloth-cum-Kirana business at Gandhinagar with the

condition that the said business would not only be a security with the Administration but the said security should at all times remain insured against fire to the extent of at least 10 per cent, above the security.

The shop was thus insured for Rs. 6.100/-with the All India General Insurance Company Limited, Bombay. On 18-8-1955 the respondent served a notice under S. 3, Government Premises Eviction Act (Act 27 of 1950) on THE PETITIONER CALLING UPON HIM TO VACATE THE SHOP WITHIN 15 DAYS FROM THE DATE OF THE SERVICE OF THE NOTICE. FAILING WHICH THE PETITIONER WAS LIABLE TO BE FORCIBLY EJECTED THEREFROM.

3. The petitioner's case is that the said notice and action taken by the respondent was free from Bias and prejudice against the petitioner who had invited the attention of the higher authorities to certain irregularities and illegalities committed by the respondent.

In this connection a criminal case under S. 182, I. P. C., has been instituted against the petitioner which is pending in the Court of the First Additional Munsiff & Magistrate First Class, Bhopal. The allegation, therefore, is that the respondent obviously chose to mete out the punishment to the petitioner by harassing him out of his business at Gandhinagar and making it almost impossible for him to earn his livelihood.

4. It is admitted by the respondent that the petitioner had made a complaint against the respondent but his case in this connection is that the complaint was enquired into by higher authorities and found to be without any substance, and it was under their direction that he lodged a criminal complaint against the petitioner, which is sub-judice.

It is further said that the notice of eviction under S. 3, Government Premises Eviction Act was not served due to any bias or prejudice against the petitioner but as a result of the policy of the Government of India to shift all the displaced persons to the new colony being built in Bairagarh.

It was further mentioned that when the displaced persons came to Bairagarh, they were permitted to occupy quarters at Gandhinagar on a temporary basis & were also given shops there temporarily to carry on business and that in view of the decision of the Government of India only the Widows and Destitutes Home was to be retained in Gandhinagar, while all the displaced persons were to be shifted to Bairagarh.

5. The petitioner's further case is that he had appealed against the said notice with a request of stay of the execution and enforcement of the said notice but the grant of stay order was refused, with the result that he had no other option except to invoke the extra-ordinary jurisdiction of this Court.

It is further pleaded that the Government Premises Eviction Act (Act No. 27 of 1950), particularly S. 3 thereof, under which the said notice was issued, is ultra vires; that the Competent Authority is not competent in the matter and his

appointment was not made validly; that the respondent has not given any reasons for the issue of the notice, nor was an opportunity given to the petitioner to give his explanation before the issue of the notice; that the said Act was not applicable to the present case, as none of the grounds mentioned in S. 3 thereof exists-the petitioner being not guilty of subletting, or contravening any of the terms under which he was authorised to occupy the said premises, nor was he in unauthorised occupation of the premises; that the said notice was illegal and without jurisdiction and the threatened action of forcible eviction was absolutely without justification; and that the said notice and the action of the respondent was not only in violation of his fundamental rights but was also in violation of all principles of natural justice and also of the law itself.

It was on these grounds that the petitioner asked for the cancellation of the notice and for the injunction to restrain the respondent from evicting the petitioner from the shop in question.

6. Part of the case of the respondent has already been indicated above, but it may here be mentioned even at the risk of repetition that according to the respondent, the petitioner had come to Bhopal like other displaced persons and was permitted to occupy one quarter for residential purposes at Gandhinagar and was also given a shop at Gandhinagar to carry on the business. All the buildings at Gandhinagar belong to the Defence Department and the displaced persons were merely permitted to occupy them for the time being till permanent arrangements were made by the Government at Bairagarh.

Consequently, when new quarters were ready at Bairagarh, the petitioner was offered a new quarter there, but he preferred to stay in an old quarter as he was not required to pay any rent for the old quarter. He, however, shifted to this quarter at Bairagarh in July, 1954. It is further said that the petitioner was at no time called upon to pay any rent of the shop, nor were any rights of tenancy created in his favour. In fact, he was never treated as a tenant but was in permissive occupation of the shop as a licensee to carry on his business there for the time being.

According to the Government arrangements, all displaced persons for the time being living or doing business at Gandhinagar had ultimately to be removed to Bairagarh after final arrangements for their permanent rehabilitation there were made and consequently, when alternative accommodation was available at Bairagarh, a notice was given by the respondent to the petitioner vide No. 3346 dated July, 1955, calling upon him to vacate the shop in his occupation at Gandhinagar.

At the same time he was informed that he may contact the respondent for allotment of a shop as alternative accommodation at Bairagarh. Instead of complying with this notice, the petitioner filed written objections in July 1955.

This representation was placed before the Secretary, Rehabilitation Department, Bhopal and after obtaining his orders, it was rejected and the petitioner was

informed under letter No. 3531 of August 1955 to vacate the shop at Gandhinagar within one week's time from the time of issue, indicating therein that if he failed to vacate the shop, he will be deemed to be in unauthorised occupation of the shop and will be liable to eviction under the provisions of the Government Premises Eviction Act.

The petitioner failed to vacate the shop and instead gave a notice through his counsel on 8-8-1955. Thereafter the respondent gave him a notice as required by S. 3(1) (b) of the above Act and it was served upon the petitioner on 18-8-1955. The petitioner had filed an appeal before the Chief Commissioner against the earlier notice and it was rejected under his order dated 19-8-1955. He also filed another appeal against the second notice under S. 3 of the aforementioned Act and it was also rejected by the Chief Commissioner under order dated 1-9-1955.

The respondent denied that the petitioner had no facilities at Bairagarh to make his living. On the other hand, it was mentioned that the present population of Gandhinagar was only 2000/- while that of Bairagarh was 13,000. Lastly it was pleaded that the petitioner did not have any legal right in himself to continue to occupy the shop at Gandhinagar and consequently the present petition was not maintainable under the law.

It was also mentioned that a number of complaints were received against the petitioner that he was creating a lot of disturbance and obstruction in the proper and smooth administration of the Widows and Destitutes Home at Gandhinagar.

7. During the hearing of the petition, the learned counsel for the respondent also mentioned before me that the quarters and shops at Gandhinagar when vacated by the displaced persons will not be permitted to be re-occupied by anyone else except by Government servants for use as their residence or office, and the Widows and Destitutes Home will be established there on a permanent basis. It was also mentioned that the shops in Bairagarh were almost ready and the few displaced persons who still had shops at Gandhinagar will be shifted to Bairagarh latest within three months.

8. The following points are for consideration in the present petition:

(1) Whether the Government Premises Eviction Act (Act No. 27 of 1950), specially S. 3 thereof, is ultra vires?

(2) Whether the notice under S. 3 of the above Act, served on the petitioner on 18-8-1955, is valid and enforceable, and if it is liable to be set aside on the ground that it does not give any reasons for eviction and before the issue of the notice, no opportunity was given to the petitioner to show cause against it?

(3) Whether the Competent Authority, namely the respondent, was properly appointed & had the power to issue the notice under S. 3 of the above Act for eviction of a person from a shop situate in Gandhinagar? and

(4) If the present petition is maintainable?

9. In view of the fact that the material on record clearly indicates that the respondent was not appointed the Competent Authority for Gandhinagar and, in any case, could not exercise the powers under the afore-mentioned Act with regard to the Government buildings situate therein, it is not necessary for me to consider the first two points and to give decision thereon. These points if raised subsequently can be considered on merits.

It was under Notification No. 12 of 14-9-1954, of the Home Department of the Government of Bhopal, that the Assistant Rehabilitation Officer was authority to perform the functions of the Competent Authority under clause (a) of S. 2, Government Premises Eviction Act, 1950 (Act No. 27 of 1950) within Bairagarh township in the cases falling within the purview of the said Act under cl. (b) of S. 2. The boundaries of Bairagarh township were not indicated in this notification.

According to the petitioner, there was no Bairagarh township and, in any case, Gandhinagar was distinct from Bairagarh & did not fall within the supposed limit of Bairagarh township. On the other hand, it was contended on behalf of the respondent that Bairagarh township should be deemed to be the same as the limits of Bairagarh town area and Gandhinagar was for a very long time a part of Bairagarh area, with the result that the appointment of the Assistant Rehabilitation Officer as the Competent Authority was valid both for Bairagarh and for Gandhinagar.

Considerable time of the Court was wasted in determining the territorial limits of the Bairagarh township. The Government Advocate representing the respondent was directed to furnish necessary information about the territorial limits of Bairagarh township. He first of all filed a map which was not accepted to be correct by the other party. Thereafter an affidavit of Shri H.R. Nair, Secretary, Rehabilitation Department, dated 8-10-1955 was filed along with another map.

As regards the two maps, it was mentioned in para 5 of the affidavit that the first map did not show the area as finally determined but included some area which was then proposed to be brought within the Bairagarh township, and that the second map produced with the affidavit showed the bound arises of the Bairagarh township as determined by the Government. It was thus said that this second map which included Gandhinagar was final and would show that Gandhinagar was included in the Bairagarh township.

But it is apparent from the statement filed by the Government Advocate on 31-10-1955, that the boundaries of Bairagarh township under the Town Areas Act have not yet been finalised and none of the maps produced by him was final, being pending before the Government for orders. This will, therefore, show that the affidavit dated 8-10-1955 was filed by Shri H.R. Nair, Secretary, Rehabilitation Department, without properly studying the maps and the records available in his office or in the Secretariat.

The learned counsel for the petitioner had taken an objection to the affidavit filed by a person other than a party to the case. Considering that Shri Nair was a responsible officer of the Rehabilitation Department, this objection on behalf of the petitioner was not accepted; but it is a matter of regret that a senior public servant did not care to ascertain correct facts before filing an affidavit.

In view of the fact that the affidavit was not based upon his personal knowledge but was on the information gathered from the records of the office, no further action appears necessary. But it would be much appreciated if in the future the Government departments do not take the matter of filing affidavits so lightly as was done in the present case.

10. The other information contained in the affidavit is also not supported by other maps or facts which have come to the notice of the Court. It was mentioned in para 1 of the affidavit that the area known as Gandhinagar was originally a part of the Bairagarh Prisoners of War Camp which was established in or about the year 1943.

But this does not appear to be a fact as would be clear from the map of the Prisoners of War Camp, Bairagarh, produced before me on a subsequent hearing. Similarly, in para 4 of the affidavit it was mentioned that the Bairagarh town area was for the first time created under S. 3, U.P. Town Areas Act as extended to Bhopal by Notification No. 44 dated 29-12-1953, and in the notification the boundaries were described as the whole of the Bairagarh township.

A reference to Bairagarh town area should have been made only if a final decision as to its boundaries had been taken and notified in the State Gazette. But during the hearing of the arguments it was conceded by the Government Advocate that though Bairagarh town area had been created and elections for its membership had already taken place, the Government had not yet taken a final decision as to what the boundaries of the town area would be.

It is not clear to me how the constituencies or the wards could be formed prior to the elections, unless the boundaries of the town area had been determined. But this is not a matter on which I need express any opinion. However, the fact remains that even though the town area elections have been held, no final decision has yet been taken as to what would be the limits of this town area.

Thus, even if it could be presumed that the limits of the Bairagarh township as mentioned in the notification of 14-9-1954, were the same as of Bairagarh town area, it cannot, in the circumstances mentioned above, be said that Bairagarh township can be deemed to include Gandhinagar also.

In this connection it may also be observed that ordinarily a township has a lesser area than the town area and even if the limits of the town area had been established and duly notified, the Courts of law would have been reluctant to infer therefrom that these would be the limits of the Bairagarh township also.

11. Apparently, the Government of Bhopal realised the lacuna in the notification

of 14-9-1954, and removed the defect by issuing a fresh Notification No. 10/11 of 22-10-1955, wherein the boundaries of the areas for which the Competent Authority was appointed were detained. The wordings of this fresh notification are quite distinct from the older notification.

In the notification of 14-9-1954, the appointment of the competent authority was for the Bairagarh Township while in the notification of 22-10-1955 the appointment was made for the areas known as Bairagarh and Gandhinagar having their boundaries as shown hereunder." Even if there could exist any controversy as to the extent of the Bairagarh township, it has in my opinion been set at rest by the subsequent notification of 22-10-1955.

In this notification the word "Areas" has been used in plural, signifying thereby that Bairagarh and Gandhinagar are quite distinct areas and not that they form part of one area. Further, the boundaries of Bairagarh and Gandhinagar have separately been given in this notification. This will also confirm the above inference.

In other words, therefore, even though under the notification of 14-9-1954, the respondent was authorised to perform the function of the Competent Authority for a supposed area of Bairagarh township, yet the limits of the township were not indicated. In fact, the limits of Bairagarh town area are still unknown. On the other hand, the notification of 22-10-1955, clearly shows that Bairagarh could not include the area known as Gandhinagar.

Thus, the respondent was not appointed the Competent Authority for Gandhinagar and he could not take any action under the Government Premises Eviction Act for the shops situate in Gandhinagar. For this reason the notice issued by him would be illegal and on the basis of such a notice, the petitioner could not be evicted in case he failed to vacate the shop within 15 days of the service of the notice.

12. This disposes of the petition on merits, but the question of the maintainability of the petition is another point of great importance to indicate to the public, as a whole as to whether a person placed in the position of the petitioner could seek remedy under Art. 226 or 227, Constitution of India.

13. Article 226 of the Constitution runs as below:

(1) Notwithstanding anything in Art. 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases any Government, within those territories, directions, orders, or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, or any of them, for the enforcement of any of the rights conferred by part 3 and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

A writ petition is thus maintainable for the enforcement of any of the rights conferred by Part 3 of the Constitution i.e. fundamental rights, and also for any other purpose. The words "for other purpose" have not been defined in the Constitution and this is why they have been differently interpreted by the various High Courts.

The Patna High Court has taken the view that these words mean only the enforcement of any legal right or performance of any legal duty, vide - "Bagaram Tuloule v. State of Bihar", 1950 Pat 387 (AIR V 37) (FB) (A). The observations of Sarjoo Prosad J in - "Ram Prasad v. State of Bihar", 1952 Pat 194 (AIR V. 39) at p 200 para 29 (B), are to the same effect.

In "Assam Fisheries Farms & Industries Ltd. v. Development Commissioner, Assam", 1953 Assam 155 (AIR V. 40) (C) Sarjoo Prosad C.J. has used milder words "valid right". These words do not necessarily mean a legal right and would cover those cases where a person has no legal right but has a strong or rightful case for invoking the extraordinary jurisdiction of the High Court under Article 226 The Patna view was not followed in - "G.D. Karkare v. T.L. Shevde", 1952 Nag 330 (AIR V. 39) (D). The relevant observations are at p. 334 and are as below:

In our view, we state it with due respect to their Lordships, the enforcement of legal right and the performance of legal duty cannot be exhaustive of the purposes for which the Court may issue any order, direction or writ under Article 226.

The Allahabad High Court also does not appear to have adopted the narrow interpretation given to the above words by the Patna High Court, In - Maqbulunisa v. Union of India," 1953 All 477 (AIR V 40) (FB), at p 478 Col. 2 (E), it was observed as below:

It must be borne in mind that the power of this Court under Art, 226 of the Constitution is not limited to only that class of cases where a fundamental right has been infringed. There is in that sense a distinction between Art. 32 of the Constitution which gives power to the Supreme Court to intervene where there is an allegation that fundamental rights have been violated, and Art, 226 where the Court can give relief not only in cases where fundamental rights have been violated but also in those where, for any other reason, it may be just and expedient for this Court to interfere.

In - "Keshab Chandra v. Inspector of Schools", 1953 All 623 (AIR V. 40) (F), a writ was granted as there was violation of principles of natural justice, even though in para 5 at page 624 it was observed as below:

To hold that a student has a legal right to come to a Court of law and require the head of the institution to justify his action where he had meted out some punishment or taken any disciplinary action will be subversive of all discipline in our schools and colleges and we must not, therefore, be deemed to have

countenanced any such suggestion by this order.

Thus, even though the petitioner had no fundamental or legal right, a writ was issued when there was a clear violation of all principles of natural justice. Lastly, it may be observed that the Supreme Court also appears to have adopted the general view and not that there must in each and every case be an infringement of a fundamental or a legal right.

In - *The State of Orissa Vs. Madan Gopal Rungta*, , it was observed that the concluding words of Art. 226 had to be read in the context of what precedes the same and, therefore, the existence of the right was the foundation of the exercise of the jurisdiction of the Court under this Article.

The general word "right" has been used and not "legal right" and consequently these observations can be interpreted to mean that the jurisdiction of the High Courts can be invoked under Art. 226 of the Constitution where the petitioner has a right not necessarily a fundamental or legal one, which is being infringed or is about to be infringed.

14. A legal right is one which a person can enforce through the Court of law. In many cases a person does not have a legal right and consequently cannot invoke the jurisdiction of the ordinary civil Courts. But in order to check any abuse of the authority or any injustice being done, such person can seek protection of the High Courts under their extraordinary jurisdiction conferred by the Constitution under Art. 226.

One of the writs which can be issued by the High Courts is of Quo Warranto. Under the Ordinary laws a person even if likely to be affected by an improper appointment of any authority or officer can approach the Court of law only after his rights have been infringed or there is an imminent danger of such infringement i.e. after the accrual of cause of action.

In other words, a person can have a legal right to approach the Courts against an improper appointment only after his rights have been affected. But for so long as no cause of action has accrued, that person cannot be said to have any legal right. In case he is to wait for the accrual of the legal right, considerable mischief can be done by the continuance in office of an authority improperly appointed.

A writ of Quo Warranto can thus be issued on the petition of an interested person without his having acquired any legal right. In certain cases there may be no possibility of a legal right accruing to an interested person, e.g., if an election tribunal to hear against the election of a candidate as a member of the Parliament or the Assembly is wrongly constituted against the law, the person who would be directly affected would be the successful candidate, the person challenging the election or parties to the election petition. These persons can be said to have a legal right to challenge the constitution of the election tribunal.

But an elector being interested in the election can also move the High Court under Art. 226 to obtain an adjudication about the illegal constitution of the

tribunal. If a restricted meaning is given to the words "for any other purpose", it will not be possible for interested persons to obtain a writ of high prerogative to avoid any injustice being done by an authority improperly constituted.

There can also be many instances where the High Courts can interfere under Art. 226 even if no legal right had accrued to the petitioner. For example, if a student has passed the 9th class from a public school but is not admitted to the 10th class of the same school without any reasonable cause, such a student cannot have any legal right for admission in the same school.

But at the same time, considering that his career would be adversely affected if he were not admitted in any school giving lessons in the same subjects which the student had taken in the 9th class, the High Courts can interfere by issuing a writ of a suitable nature, if the action of the authorities is found to be arbitrary or discriminatory.

In such a case, a person without a legal right can invoke the jurisdiction of the High Court under Art. 226 of the Constitution. I am thus of opinion that correct interpretation of Art. 226 would be that ordinarily the High Courts will not interfere, unless there is an infringement of some fundamental or legal right or there is an imminent danger of the infringement of such right.

But in special cases the High Courts can interfere even though no such right exists but it is just and expedient for the Courts to interfere with the order passed. This will always be at the instance of an interested person who is able to prove that there exists a right not necessarily fundamental or legal entitling the interference by the High Court.

15. It is the admitted case of the parties that the petitioner was allowed to occupy the shop at Gandhinagar for running his business, without payment of rent and that he is a displaced person and was given the accommodation in accordance with the policy of the Government of India to rehabilitate the displaced persons. The petitioner would, therefore be deemed to be a licensee and not a lessee.

It was suggested on behalf of the petitioner that his status would be much stronger than that of a licensee in view of the fact that he had lost all his properties as a result of the partition of the country in 1947 and consequently it was the legal duty of the Government of India to provide him with properties in view of the fact that he had lost his assets before migration to India. This contention of the learned counsel for the petitioner cannot be accepted.

If there lies any responsibility for reimbursing the petitioner of the properties lost in Pakistan, it would be on The Dominion of Pakistan & not on the Indian Government. For any liability that accrued prior to the partition of the country in 1947 relating to the present territory of the Republic of India, it could be said that there was a legal obligation on the Government of India to compensate the petitioner to that extent.

But all his assets were left in the territories of Pakistan and, in my opinion, the Government of India cannot in any way be made responsible for reimbursing the petitioner to that extent. It was as a matter of grace that the Government of India took upon itself to rehabilitate the displaced persons, keeping in mind that such persons had shifted to India and were the citizens of India.

Any act of leniency or grace cannot take the place of a legal responsibility. Consequently, the petitioner has no status other than that of a licensee who is made to temporarily occupy the buildings for purposes of residence and for business.

16. It may be that the respondent and also the Rehabilitation Department were not pleased with the petitioner on account of his moving complaints against the respondent which, according to him were, found to be baseless. But this does not appear to be the reason why the respondent was called upon to shift his business to Bairagarh.

During the hearing of the petition, the learned Government Advocate had made a statement on behalf of the respondent that it was under the decision of the Government of India that displaced persons were being shifted to Bairagarh as soon as quarters including shops were ready there. It was also made clear that after the houses and shops were vacated by displaced persons, they would not be allotted to any other displaced person except for the use of Government servants for their residence and office.

Certain shop-keepers had already been shifted and there now remain only a counted few who had to be provided with shops in Bairagarh. It was also stated on behalf of the respondent that the other shops were almost ready and even the remaining shop-keepers doing business in Gandhinagar would be shifted to Bairagarh latest within 3 months. I find no reason to disbelieve the respondent on this point, specially when the shops in Gandhinagar are being got vacated in pursuance of the policy of the Government of India, as would appear from the documents on record.

In case any discrimination was being shown and the petitioner was the only person who was being compelled to shift his business to Bairagarh, there would have been some force in the contention put forward by the petitioner and on the ground of discrimination I might have considered it proper to interfere with the order directing him to vacate the shop at Gandhinagar and to shift to some shop in Bairagarh. For so long as the action of the respondent is not discriminatory or is not arbitrary, it will not be proper for this Court to interfere with that order.

16a. In this connection it may also be observed that it will not be proper for the High Courts to interfere with an order of a public authority calling upon a licensee like the petitioner to shift his business to a locality which is being ear-marked for the displaced persons. In case the licensees are given the protection under Art. 226 of the Constitution, many anomalous situations are likely to arise.

For instance it could happen that due to shortage of accommodation displaced persons were permitted to temporarily occupy a palatial building until the quarters for them being built were ready. The mere occupation of big buildings by displaced persons cannot confer any right in them to be allowed to remain in such buildings for ever. If such a view is accepted, the result would be that an irreparable injury would be done to the public authority as a result of an act of leniency being shown by them.

In my opinion, there can be no cause of grievance to the petitioner, nor will any injustice be done to him, when an alternative suitable accommodation is being provided to him. It was strongly urged on his behalf that by shifting his business to Bairagarh, he will lose his business and may thereby be deprived of his only means of livelihood. This view does not at all appeal to me.

Bairagarh is a much bigger town than Gandhinagar and the chances are that the petitioner would be able to earn a much better profit at Bairagarh than at Gandhinagar. Further a person who shifts to a new locality first is likely to be better off than one who is the last to start his business there.

The fact that the petitioner has got his properties insured for the shop at Gandhinagar will not make any difference, as it is a matter of common knowledge that the insurance companies raise no objection when the place of business is changed to a better locality. Further, even if the present insurance company raises any objection, the petitioner can have his properties insured with another company, and if all the insurance companies refuse to insure his properties while kept in the shop at Bairagarh, it will be a good ground for the petitioner to urge in his favour if the respondent or the Rehabilitation Department subsequently insists for the compliance of the conditions of insurance with regard to the grant of the loan.

No such contingency is likely to arise and it will, therefore, not be proper for me to allow the petition on such a flimsy and imaginary ground.

17. None of the parties have been able to invite my attention to any case law on writs directly applicable to the case of a licensee. The cases brought to my notice pertain to either trespassers or lessees or to matters in which the parties had substantial interest.

Detailed reference to such cases is not necessary, but it may simply be observed that in - Harnam Singh Vs. The State of Punjab, and - Gurcharan Singh Jodh Singh Vs. Chairman Delhi Improvement Trust, New Delhi, , the Punjab High Court refused to interfere and did not exercise the discretion in favour of trespassers. - "Mohindarsingh v. State of Pepsu", AIR 1955 Pep 60 (AIR V 42) (J), can be of no help to the petitioner, as in that case the alleged trespasser was not displaced person who had, on his migration to India, occupied a part of the land. This is the case of a person who was in possession of the land for more than 50 or 60 years, even at the time of the Ruler of the former Faridkot State, and a suit brought against the alleged trespasser by His Highness the Maharaja

of Faridkot, for possession of the land, was dismissed.

The possession of Mohindarsingh could not, therefore, be deemed to be as of a trespasser. For a person in possession of the land for such a long period, the executive could not be permitted to adopt any summary method of ejectment. In the present case, the petitioner is occupying the land, as a licensee for a short period only and after he vacates, he will have an alternative accommodation available for carrying on his business.

K.K. Verma and Another Vs. Union of India and Another, & Dr. Bhagwant Kishore v. Dy. Commissioner Rewa Dist.", AIR 1952 Vindh 78 (AIR V. 39) (L), are the cases of a lessee and are quite distinct from that of a licensee who had been provided with temporary accommodation till a colony was ready for the displaced persons.

18. The learned counsel for the petitioner has also relied upon two other reported cases. - "Sunderlal Baijnath v. State of Madhya Bharat", 1955 Madh-B 161 (AIR V. 42) (M), is the case of a bidder at an auction sale, while - Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others, of a businessman whose licence was not renewed without any reasonable cause.

In both these cases it was held that the petitioners had a sufficient legal interest to move the High Court under Art. 226 to challenge the order if the authorities had not conducted themselves within the bounds of their authority. The case of a licensee cannot be placed in either of the categories, chiefly because a licensee has no right to say that even though he was offered an alternative accommodation, he should be permitted to continue to occupy the shop given to him temporarily.

19. To sum up, it cannot at present be said that the action of the respondent in calling upon the petitioner to vacate the shop at Gandhinagar and to shift his business to Bairagarh was arbitrary or discriminatory, with the result that the present is not a case in which this Court should exercise its discretion in favour of the petitioner. The petition must, therefore, fail.

20. The notice under S. 3, Government Premises (Eviction) Act, as already given to the petitioner, is illegal on the ground that the Competent Authority was not validly appointed for Gandhinagar. But this aspect of the case does not require any further consideration or directions by the Court, as the learned Government Advocate mentioned before me that further proceedings for eviction will not be taken till after the issue and service of a fresh proper and valid notice under S. 3 of the above Act.

21. The petition is hereby dismissed. In the circumstances of the case, no order of costs is being passed.