
(1999) 06 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 704 of 1999

Mohammed Yunus

APPELLANT

Vs

Urban Improvement Trust, Jodhpur and Others

RESPONDENT

Date of Decision : 17-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A

Constitution of India, 1950 — Article 226

Rajasthan Public Premises (Eviction of Unauthorised Occupations) Act, 1964 — Section 2

Rajasthan Urban Improvement Trust Act, 1959 — Section 92A

Citation : AIR 1999 Raj 334 : (1999) 3 RLW 1714 : (1999) 3 WLC 645 : (1999) 1 WLN 552

Hon'ble Judges : M.A.A. Khan, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; Dinesh Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

Chauhan, J.—The instant appeal has been filed u/s 18 of the Rajasthan High Court Ordinance, against the judgment/ order dated 19-5-99 passed by the learned single Judge in S.B. Civil Writ Petition No. 1484/1999, by which the writ petition filed by the appellant-petitioner has been dismissed.

2. The facts involved in this case are not in dispute. Respondent No. 1 granted a licence in favour of the respondent No. 3 Damami Sabha, Motilal Boarding House, Jodhpur, on certain terms and conditions vide order dated 18-5-1968 (Annexure 1 to the writ petition) in respect of the land measuring 2599 square yards for constructing a boarding house for the students belonging to Damami community near Perli Semetry, Masuriya, Jodhpur, Respondent No. 3 inducted the appellant-petitioner as a sub-tenant on a part of the land measuring 30" x 10" in the year 1991 on a monthly rent of Rs. 1400/- and the appellant-petitioner raised certain constructions on the said land and after obtaining licence from the Shop and Commercial Establishments Department, started running a

scrape-shop. Some other tenants were also inducted on the said land like the appellant-petitioner. The society did not construct the boarding house, for which the land was allotted, nor paid the licence fee after 31-3-1984. Respondents No. 1 and 2 issued a show cause notice dated 2-9-97 (Annexure 5) to the respondent No. 3, i.e. the original allottee, to explain within a period of two weeks as why the allotment be not cancelled as the allottee failed to construct the hostel building for poor children of Damami Samaj, and also for sub-letting a part of the land as well as for not depositing the licence fee and for not getting extension of the licence period as the original licence was valid only for a period of three years and the use of the land had been made by the respondent No. 3 society in contravention of the terms and conditions of the licence. Immediately after receipt of the said notice respondent No. 3 society deposited the licence fee to the tune of Rs. 1200/- only on 19-9-1997 and submitted its reply to the show cause notice (Annexure 7), submitting that the Competent Authority of the respondents No. 1 and 2 had made a declaration of cancellation of the licence in 1982, and litigation was pending in respect of the said cancellation.

3. Respondents No. 1 and 2 ultimately cancelled the said licence in favour of respondent No. 3 and served a show cause notice dated 26-9-97 (Annexure 8) to the appellant-petitioner u/s 92-A of the Rajasthan Improvement Trusts Act, 1959 (hereinafter referred to as "the Act, 1959") as why he should not be removed from the possession as he was having an encroachment on the said part of the land. Appellant-petitioner, was also asked to appear before the Competent Authority on 15-10-97 for personal hearing. However, immediately after receiving the said show cause notice he filed civil suit No. 694/1997 before the Civil Court and obtained an interim injunction on 6-10-97 to the effect that he should not be removed by the Authorities under the Act, 1959 except in due process of law. Appellant-petitioner also filed reply to the said show cause notice on 7-11-97 and after considering his reply, the Authority passed the order dated 4-3-98 (Annexure 10) directing the appellant-petitioner to vacate the said land within a period of three days. Being aggrieved and dissatisfied of the order dated 4-3-98, appellant-petitioner preferred an appeal No. 20/1998 in the Court of the District Judge, Jodhpur. The Appellate Court, vide order dated 19-3-98, stayed the operation of the impugned order. The said appeal was rejected vide judgment and order dated 7-9-98 (Annexure 11) as not maintainable. Appellant-petitioner immediately filed an application before the Civil Court under Order 39, Rule 2-A of the Code of Civil Procedure, alleging that the impugned eviction order dated 4-3-98 (Annexure 10) had been passed in violation of the interim order passed by the said Court without taking recourse to due process of law. However, the appellant-petitioner, for reasons best known to him, got the application dismissed as not pressed vide order dated 10-9-98.

4. Respondents Nos. 1 and 2 served another notice/order dated 22-4-99 (Annexure 12) directing the appellant-petitioner to remove his possession. Being aggrieved and dissatisfied, appellant-petitioner preferred the aforesaid writ petition on 30-4-99 mainly on the ground that he had been inducted by the

licencee in 1991 and, thus, he had not made any encroachment and he cannot be removed under the provisions of the Act, 1959 as the only due process, by which he could be removed, was under the provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (hereinafter referred to as "the Act, 1964") as the public premises, as defined u/s 2 (b) (ii) includes the premises belonging to an Improvement Trust established under the Act, 1959. Respondents Nos. 1 and 2 contested the writ petition and in the application under Clause 3 of Article 226 of the Constitution of India, raised the ground that the writ petition was not maintainable as the appellant-petitioner had no legal right to remain in possession after cancellation of the licence granted in favour of the respondent No. 3; moreover, his induction by the respondent No. 3 was void being against the public policy and in contravention of the terms and conditions incorporated in the licence; Section 92-A of the Act, 1959 provide for "due process of law" for eviction and at the most, if the impugned order dated 4-3-98 was in disobedience of the interim order of the Court dated 6-10-97, the only remedy available to the appellant-petitioner was to file an application under the provisions of Order 39, Rule 2-A, CPC, which he filed and withdrew. Thus, maintaining the writ petition was an abuse of the process of the Court.

5. The learned single Judge considered the rival submissions made on behalf of the parties and dismissed the writ petition. Hence this appeal.

6. Learned counsel for the parties have reiterated the stands taken by them before the learned single Judge and made the same submissions. We have given our anxious and solicitous consideration thereto.

7. It is settled law that a writ petition under Article 226 of the Constitution of India is maintainable for enforcing the statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the respondents. Therefore, there must be judicially enforceable right, for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on its performance. The existence of the said right is a condition precedent to invoke the writ jurisdiction. (Vide *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, *State of Kerala Vs. Smt. A. Lakshmikutty and others*, *Mani Subrat Jain and Others Vs. State of Haryana and Others*, and *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*,

8. In *Rajendra Singh Vs. State of Madhya Pradesh and others*, the Hon"ble Supreme Court observed that mere violation of each and every provision of a law or general principles of law does not furnish a ground for the Court to interfere. In most of the cases, substantial compliance of law would be enough and unless it is established that violation of law has caused substantial prejudice to the party, the interference is not warranted.

9. The relevant terms and conditions of the licence provided as under :--

(a) the land shall be used by the licensee for the purpose of constructing a residential boarding house for providing dwelling and no other purposes:

(b) the licensee will not sub-divide the site or construct more than one dwelling house on it;

(c) the licensee shall erect the building and complete the same within a period of three years and obtain the completion certificate from the Trust;

(d) the building so erected shall be used solely for the boarding house;

(e) the licensee shall not transfer or assign the licence, or the benefit thereof, or execute any instrument purporting to do so;

(f) in the event of breach, non-performance or non-observance of any of the foregoing conditions, the licensor shall be entitled to revoke and determine the licence thereby granted and re-enter upon the said land; and

(g) the licence was valid only for a period of three years, unless extended by the licensor.

10. In the instant case, admittedly, none of the aforesaid terms and conditions had been complied with by the licensee (respondent No. 3). The induction of the appellant-petitioner was in flagrant violation of the said terms. It is the appellant-petitioner's own admission in para 5 of the writ petition that he raised certain construction on the said part of the land to run the scrape-shop. Admission is the best evidence that an opposite party can rely upon and it may be a decisive factor unless the same is successfully withdrawn or proved erroneous. Vide *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others*, Contesting respondents are justified to assert that as the induction of the appellant-petitioner as well as raising construction by him violated the public policy as being manifested in the terms and conditions of the licence, his induction was void ab initio.

11. In the case of *Shri Paresar Vs. Municipal Board*, this Court observed that the expression "public policy" connotes some matter which concern the public good and the public interest. Hence, policy decision taken by the State Government can also be said to be synonymous to public policy, provided such policy decisions taken by the State are legal and valid and in case the property is alienated by any means for any purpose in violation of the public policy, such alienation would be "ab initio void" and would not confer any right, title or interest in favour of the transferee and any violation or obstruction of such a policy decision would be void ab initio and is liable to be ignored by virtue of the provisions of Section 23 of the Indian Contract Act, 1872. The Court further observed as under :--

"..... In a modern progressive society with fast changing social values and at the juncture when there is a crisis of confidence, the concept of public policy

used u/s 23 of the Indian Contract Act, deserves to be widened to meet the demands of new situation by including policy decision taken by the State Government, which is eminently just, proper and legal to keep pace with the globalised progress of the society."

12. The view taken by our esteemed brother Yadav, J., gets fortified by a catena of judicial pronouncements, wherein it has categorically been held that a person who purchases the land after publication of Notification u/s 4 of the Land Acquisition Act, 1894, would have no locus-standi to challenge the land acquisition proceedings as any alienation in his favour would be against the public interest/public policy. (Vide Pt. Lila Ram Vs. The Union of India and Others, U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, Galaxy Mercantile Ltd. v. State of Haryana, (1997) 11 SCC 427 and Anil Kumar and Others Vs. State of Rajasthan and Others,

13. In Jaipur Development Authority Vs. Mahavir Housing Coop. Society, Jaipur and Others, the Hon"ble Apex Court, though not decided the issue finally, expressed a doubt on maintainability of a reference u/s 18 of the Land Acquisition Act, by a person who purchases the land after publication of Section 4 Notification.

14. "Public Policy" though not defined in the Indian Contract Act or any other Statute and remains a vague and unsatisfactory term, but in the ordinary sense, it means "political expedience" or that "which is best for the common good of the community". Vide Egerton v. Borownlow 10 ER 359 , considered and relied upon by the Hon"ble Supreme Court in Gherulal Parakh Vs. Mahadeodas Maiya and Others,

15. The Common Law Doctrine of public policy can be invoked wherever an action affects/ offends the public interests or where harmful result of penning the contract in terms of injury to the public at large, is evident and undisputable as such a contract is hit by Section 23 of the Contract Act and is void. Vide Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, Firm of Pratapchand Nopaji Vs. Firm of Kotrike Venkata Setty and Sons and Others,

16. In Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others, the Hon"ble Supreme Court has observed that any provision of law which is based on public policy, has to be given a strict adherence for the reason that the same has been enacted to protect the interest of the community as a whole. The Court further observed as under:--

"Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time."

17. In the instant case, the land allotted to the respondent No. 3 has not been

utilised for the purpose it was allotted. The appellant-petitioner raised the construction without any sanctity or authority of law. His induction has to be ignored as it was of no consequence and he cannot take a stand that he was legally inducted by the respondent No. 3 during the subsistence of licence in its favour for the reason that his induction was inconsistent with the terms and conditions incorporated in the licence itself.

18. In spite of all these, the appellant-petitioner has a right not to be thrown out of possession forcibly as where a person is in settled possession of property, even on the assumption that he has no right to remain in possession, he can be evicted only by recourse to law. In *Ram Rattan and Others Vs. State of Uttar Pradesh*, the Hon'ble Supreme Court held that an owner of the property has every right to dispossess or throw-out a trespasser while he is in the act of or process of trespassing, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such a circumstance, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies provided under the law. Similar view has been taken in *Yaswant Singh v. Rao Jagdish Singh* AIR 1968 SC 620 (sic) and *Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao*, wherein the Apex Court considered and approved the law laid down by the Privy Council in *Midnapur Zamindary Company Ltd. v. Naresh Narain Roy* AIR 1924 PC 144.

19. In *Nagar Palika, Jind Vs. Jagat Singh, Advocate*, the Hon'ble Apex Court has observed that "Section 6 of the Specific Relief Act, 1963, is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law."

20. In the instant case, the contesting respondents have taken recourse to the provisions of Section 92-A of the Act, 1959, which provides for a summary procedure for eviction of a trespasser. The appellant-petitioner had been served with a show cause notice and was given an opportunity to explain his case by appearing in person also before the Competent Authority in law and it was only after considering his reply and hearing him, the impugned order dated 4-3-98 has been passed. In such a situation, the appellant-petitioner cannot be permitted to agitate an issue that he is being dispossessed without due process of law.

21. The submission made by Mr. Joshi is limited to the extent that Section 92-A of the Act, 1959, does not meet the requirement of "Due Process of Law" and appellant-petitioner could be thrown out only by resorting to the procedure prescribed under the Act, 1964 as he is a validly inducted tenant by the licensee during the subsistence of his licence. In view of the above discussion, submission made by Mr. Joshi cannot be sustained in the eyes of law. Appellant-petitioner's induction in the premises in dispute is void, therefore, he is entitled only not to be thrown out forcibly as admittedly he is in actual physical

possession of the said part of the land. We fail to understand as how the recourse to the provisions of Section 92-A of the Act, 1959 cannot be said to be a due process of law and appellant-petitioner can assert that the recourse must have been taken only to the provisions of the Act of 1964. We also find no force in the submission made by Mr. Joshi that respondents cannot remove the occupation of the appellant-petitioner by resorting to the provisions of the Act, 1959, as it provides only for summary proceedings as it would be in self-contradiction of his submission that the recourse to the proceedings under the Act, 1964 could have been taken, which also provides for summary proceedings. There is complete fallacy in this submission as there is an embargo in law to take recourse to summary proceedings for eviction of an encroacher, only when the person in possession raises "bona fide dispute about his right to remain in occupation over the land", i.e. title/ right/interest in land is in dispute. Vide Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, and State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and Others, In the facts and circumstances of the instant case, appellant-petitioner can neither raise the issue of title etc. nor claim any title better than the licensee, i.e. respondent No. 3, could have claimed. After termination of license attains finalisation, such an issue does not survive.

22. Shri Joshi made a valiant effort to bring into play the principle laid down by this Court in Municipal Council, Barmer Vs. Gautam Chand, The bone of contention of Mr. Joshi has been that the language of Section 92-A of the Act, 1959, is similar to that of the provisions of Section 203 of the Rajasthan Municipalities Act, 1959, and after considering the provisions of Section 203 of the said Act, this Court, in the case of Gautam Chand (supra) has held that an en-croacher/trespasser can be evicted by resorting to provisions of Section 203 of the Municipalities Act only if his encroachment is on a public street or public amenities which are for the public use. Thus, according to Mr. Joshi, as the land in dispute does not form part of the public street or public amenities, the appellant petitioner cannot be dispossessed by resorting to provisions of Section 92-A of the Act, 1959.

23. Provisions of Section 203 of the Rajasthan Municipalities Act deal with the encroachment or obstruction upon public land as it reads as under:--

"Encroachment or obstruction upon public Land,--- (i) whoever makes any encroachment in any land or space not being private property, whether such land or space belongs to or vests in Board or not, except steps over drain in any public street, shall, on conviction, be punished....."

24. The provisions of Section 203 of the Municipalities Act, 1959, provide for removing the encroachment or obstruction from the public land and it is not limited only for removing the encroachment from public street or public amenities which are for public use. With all due respect and humilities at our command, we are of the considered opinion that the Court while deciding Gautam Chand's case (supra) failed to take note of the actual wordings/

language of Section 203 of the Municipalities Act, 1959. Moreover, while deciding the said case, the earlier judgments of this Court in *Vijai Raj v. Sooraj Roop* 1966 RLW 310; *Kesari Mal Khatri v. The Municipal Board, Jaisalmer* 1978 WLN 295 ; and *Municipal Council Vs. Rawat Ram*, were not taken into consideration, wherein it has categorically been held that the Municipal Board, in exercise of its power u/s 203 of the said Act, can remove the encroachment or obstruction from public land.

25. In an identical situation, this Court, after considering a large number of judgments of this Court and those of the Hon'ble Supreme Court, in *Dewa Ram v. State of Rajasthan* 1983 RLW 754, observed as under :--

"That being so, the view taken in first Division Bench case must prevail because it was binding on a subsequent Division Bench and that Division Bench took a contrary view, probably because the earlier decision was not brought to its notice, the earlier Division Bench judgment would not lose its binding force. In view of the later Division Bench judgment being contrary to the earlier Division Bench decision, therefore, cannot bind a subsequent Bench-whether single Bench or Division Bench, and that bench must naturally follow the earlier decision."

26. In view of the above, we have no option but to hold that the judgment in *Gaulam Chand (supra)* remains *per incuriam* as the Court failed to take note of the actual wordings incorporated in the provision itself and the earlier judgments of this Court, referred to above, had not been brought to the notice of the Court and. thus, the judgment in the said case cannot be treated as binding.

27. The concept of "*per incuriam*" has been explained from time to time and "*per incuriam*" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or some authority binding on the Court concerned. (Vide *M/s. Tourist Guide Service v. B. D. Harsha* 1989 (2) RLR 1 ; *Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., A.R. Antulay Vs. R.S. Nayak and Another, State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, B. Shama Rao Vs. The Union Territory of Pondicherry, Municipal Corporation of Delhi Vs. Gurnam Kaur, : Municipal Corporation of Delhi Vs. Gurnam Kaur, and Ram Gopal Baheti v. Girdharilal Soni and Ors., (1999) 3 SCC 112*

28. The contention raised by Mr. J. P. Joshi that the provisions of the Act of 1964, being Special Act. would override the provisions of the Act of 1959, for the purpose of eviction of encroacher, is preposterous. Both the Acts provide for a mode of removing the encroachments. The Act of 1964 provides for removal of encroachment by the Prescribed Authority under the Act in respect of any public premises including the premises belonging to the Urban Improvement Trust; while the Act of 1959 is also a Special Act and provides for a mode of eviction of encroacher/ trespasser of the property exclusively belonging to the Trust, Thus, it cannot be said that the provisions of the Act, 1959 were not attracted. Moreover, u/s 2(b)(i) of the Act of 1964, the land belonging to any Municipal Board/

Municipal Council, established under the provisions of the Rajasthan Municipalities Act, 1959, has also been included in "public premises" and if any encroachment on land belonging to the Municipal Board/Municipal Council can be removed u/s 203 of the Municipal Act, 1959, we are at complete loss to understand as why the land belonging to Urban Improvement Trust, encroached by a trespasser cannot be recovered under the provisions of Section 92-A of 1959 Act.

29. In *Municipal Corporation of Delhi Vs. Gurnam Kaur*, the Hon'ble Supreme Court has observed that the provision of Section 322 of the Delhi Municipal Corporation Act, confers sufficient power on the Commissioner "to cause the removal of any structure which constitutes encroachment on a public place, even without notice to the trespasser. Though, undoubtedly, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were also attracted/applicable in respect of such place. The Constitution Bench of the Hon'ble Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, upheld the validity of the provisions of Section 314 of the Bombay Municipal Corporation Act, 1888, which provide for eviction of pavement dwellers without notice, though held that normally opportunity of hearing should be accorded to the trespasser on the public land for the reason that the "appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement of procedural safeguards."

30. We further do not agree with the submission made by Mr. Joshi that had recourse been taken to the Act of 1964, the appellant-petitioner could have got a remedy of appeal, which is not provided under the Act of 1959, for the simple reason that the appellant-petitioner had already filed the suit and obtained interim order of not being dispossessed except in due process of law. After dismissal of the appeal by the learned District Judge on 7-9-1998, he had filed an application under Order 39, Rule 2-A, C.P.C. which was dismissed as not pressed on 10-9-1998. The appellant-petitioner could have pursued that remedy. For the sake of argument, if we accept the contention raised by Sri Joshi that the impugned order dated 4-3-1998 gave the appellant-petitioner a separate cause of action, he could have made an amendment in the plaint in pending suit or could have filed a separate suit and then could have got the remedy of appeal etc. Thus, by no means, the appellant-petitioner can have a grievance that his removal from possession taking recourse to the provisions of the Act, 1959 has caused prejudice to him as the impugned order dated 4-3-1998 is to be tested on the touchstone of the doctrine of prejudice. (Vide *Managing Director, ECIL, Hyderabad Vs. Karunakar, etc. etc.*, *State Bank of Patiala and others Vs. S.K. Sharma*, *Major G.S. Sodhi Vs. Union of India (UOI)*, *S.K. Singh Vs. Central Bank of India and Others*, and *Monika Jain v. State of Rajasthan*, 1998 (1) RLW 71.

31. Be that as it may, we fail to understand as what is the right of appellant-petitioner to choose a particular procedure for his eviction.

32. In Noorduiddin Vs. Dr K.L. Anand, the Hon"ble Supreme Court observed as under (at page 5099 of AIR SCW) :--

"The object of law is to meet-out justice. Right to the right, title or interest of a party in the immovable properly is a substantial right. But the right of an adjudication of the dispute in that behalf is the procedural right to which no one has a vested right. The faith of the people in the efficacy on law is the saviour and succour for the subsistence of the Rules of law. In awakening like in the judicial process would rip apart the edifice of justice or create a feeling of disillusionment in the mind of the people of from law and Court. The rule of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and alمامater for the mankind. It is the foundation for the orderly human relations. Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice".

Similarly, in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, the Apex Court observed as under:

"The power under Article 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point. the interest of justice and public interest coalesce. They are very often one and the same.. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers."

33. The aforesaid judgments of the Hon"ble Supreme Court are complete answer to the controversy involved in this case and negate ail submissions made by Sri J. P. Joshi, for the reason that appellant-petitioner is no one to choose a particular procedure for his eviction as the aforesaid judgments provide sufficient guidelines for not entertaining such a plea, as the procedural right to adjudicate a dispute is not a vested right. Resultantly, in such a case, the equity Court should not give any indulgence to the trespassers at all.

34. In view of the above, we are not inclined to enter into the controversy whether petitioner has rightly filed the writ petition or whether the same is maintainable for the reason that the learned single Judge has not reached the conclusion that the writ petition was not maintainable. What has been held by his Lordship is that appellant-petitioner was not entitled for any indulgence in the equity jurisdiction under Article 226 of the Constitution for the reason that he has no legal right to remain in possession of the land in dispute, nor he has any right to choose a particular forum for his eviction from the said land and his prayer in the writ petition that he could be evicted only by taking recourse to the provisions of the Act of 1964, cannot be entertained.

35. It is well settled law that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and when the learned single Judge has done substantial

justice, no interference is required in appeal. (Vide Dal Singh v. King Emperor of India AIR 1917 PC 25 ; Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, and Sree Jain Swetambar Terapanthi Vid.(S) Vs. Phundan Singh and Others,

36. In the instant case, admittedly the appellant-petitioner, while filing the writ petition, has suppressed the material fact that he had filed an application under O.39, Rule 2-A, C.P.C. A party approaching the Court of equity is supposed to come with clean hands, clean mind and clean objective. (Vide G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, The Ramjas Foundation and Others Vs. Union of India and Others, K. R. Srinivas v. R. M. Premchand (1994) 4 SCC 620 and Rampati Jaiswal v. State of U.P. AIR 1997 AM 170. Thus, the conduct of the appellant- petitioner also disentitles him for the discretionary relief in equity jurisdiction.

37. In Narashimaha Murthy Vs. Smt. Susheelabai and others, the Hon''ble Supreme Court observed that "the purpose of law is to provide brooding sense of injustice. It is not the words of the law but the spirit and internal sense of it that makes the law meaningful. The letter of law is the body but the sense and reason of the law is the soul. Therefore, pragmatic approach would further the ends of justice. The unscrupulous persons, who approach the writ Court with oblique motive to achieve an ulterior object, should not be permitted to abuse the process of the Court, for the writ Court acts as the custodian of the Constitution and performs the solemn duty "to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good" as the equity is always known to prevent the law from crafty evasions and subtleties inviting to invade the law. (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, and State of Maharashtra and Others Vs. Prabhu, .

38. What the learned single Judge meant by observing that the appellant-petitioner had abused the process of the Court, is that even if the order dated 4-3-1998, gave afresh cause of action to the appellant-petitioner, he could have pursued the remedy under Order 39, Rule 2-A, C.P.C. on ground that the said order had been passed in violation of the interim injunction passed by the Court on 6-10-1997, The powers of the Civil Court under O. 39, Rule 2-A, C.P.C., are much wider than Court to punish a contemnor under the provisions of the Contempt of Courts Act, 1971. Under the Code of Civil Procedure, in such a situation, the Civil Court has been empowered to "order the property of a person, guilty of such disobedience or breach, to be attached," and also to "order such person to be detained in a civil prison" and in case of continuous breach or disobedience, to sell the property so attached and compensate the injured party from sale proceeds. Thus, in such circumstances, appellant-petitioner ought to have pressed his application filed under Order 39, Rule 2-A, C.P.C.

39. In sum and substance, on the basis of above, we uphold the judgment under challenge, on reaching the inescapable conclusion that competent authority of the UIT, in exercise of its powers u/s 92-A of the Act of 1959, can cause removal of trespasser/unauthorised occupant from public land, public street or public amenities of public use, after adopting a just, fair and reasonable procedure. Trespasser/unauthorised occupant cannot insist to be dispossessed by taking recourse to some other law in force for the time being, for the reason that adjudication of such a dispute is me procedural right to which no one has a vested right. While entertaining the writ petition, the Court should exercise the discretionary/equity jurisdiction only in furtherance of the cause of justice after weighing the public interest vis-a-vis private interest.

40. In view of the above, we find no substance in the appeal and the same is accordingly dismissed. There shall be no order as to costs. However, looking to the facts and circumstances of the ease and subject to filing of an undertaking within a period of one week from today, the appellant-petitioner can retain possession of the premises in dispute for a period of three months on the following terms and conditions :--

That the appellant-petitioner shall-

(i) pay the amount for use and occupation of the land in dispute to respondent No. 2 for the said three months, in lump-sum, within fifteen days from today, at the rate of Rs. 1400/- per month.

(ii) not induct any person in the demised premises;

(iii) on his cost, shall remove the construction raised by him; and

(iv) hand over the vacant and peaceful possession to respondent No. 2, i.e. the Authorised Officer, Urban Improvement Trust, Jodhpur, on or before 20-9-1999.

41. However, it is further clarified that the UIT shall be at liberty to recover the damages/amount for the use of the said property for the past period from the appellant-petitioner, in accordance with law.