

(1982) 02 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 9827 of 1981

M.R.S. Ramakrishnan

APPELLANT

Vs

The Assistant Director of Ex-Servicemen Welfare (District
Soldiers, Sailors and Airmen Board), Tiruchirapalli and Others

RESPONDENT

Date of Decision : 26-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 6
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1982 Mad 431 : (1984) 97 LW 450

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

**Advocate : Arunagirinathan, for Raian and Raj, for the Appellant; N.R.
Chandran, Addl. Govt. Pleader, for the Respondent**

Judgement

1. The petitioner, herein seeks a writ of Mandamus from this Court restraining the respondents from taking possession of premises No. 17 in Williams Road, Tiruchirapalli except in accordance with law.

2. The circumstances under which the above prayer has been made may briefly be stated: The said property belonged to the third respondent and the administration and management of the property is vested in the second respondent and the income there from is spent for the welfare of the Ex-Servicemen. no said premises has been originally leased out to the petitioner, in the year 1974 and the Petitioner continued to be in possession of the said premises as a lessee till 9-10-1981. By a notice dated 8-8-1981 the respondents requesting the petitioner to vacate and deliver vacant possession of the premises within two months from the date of receipt of the notice on the expiry of the lease period on 9-10-1981. The petitioner sent a reply stating that the lease may be renewed in view of the heavy investments made by him on the property. By a letter dated 16-9-1981 the petitioner prayed for the renewal of the lease offering to pay 15 % more than the original rent of Ra. 5,158 per month. However, the

second respondent was not willing to renew the lease but published a notice stating that an auction will be held on 6-10-1981 for lease of the said property for the period from 10-10-1981 to 9-10-1983.

3. At that stage the petitioner filed a writ petition, W. P. No. 9736 of 1981 for the issue of a writ of mandamus to prevent the auction from taking place. However, the petitioner later withdrew the same. The petitioner continued to be in possession even after 9-10-1981. At the auction which was held on 6-10-1981 the highest bid was for a monthly rent of Rs. 20,360 for a period of two years from 10-10-1981 to 9-10-1983, which is nearly four times the rent the petitioner has been paying for the same premises. As per the conditions of the auction sale held on 6-10-1981, possession of the building has to be handed over to the new lessee on 10-10-1981, and as such a notice dated 6-10-1981 asking the petitioner to vacate the premises and deliver vacant possession of the same was affixed on the outer door of Kanchana Hotel as the petitioner was absent. The petitioner, however, did not hand over possession of the premises as called upon in the notice dated 6-10-1981. On 10-10-1981 the respondents are said to have acted in an arbitrary and high-handed manner in sealing the premises with the help of Policemen by use of force and threat. It is at this stage the petitioner has come forward with the present writ petition stating that the respondents have no power to take forcible possession of the premises except under, due process of law and that the sealing of the premises with the help of the police when articles worth about five lakhs of rupees are still in the Premises and the conduct of the respondents in attempting to take forcible possession of the property is illegal. According to the petitioner, the respondents by use of brutal force with the help of police had smashed the name boards, broke open the petitioner's locks and placed seats on the door of the premises when the petitioner has not removed his articles and vacated the premises. The said action of the respondents, according to the petition, is without authority of law. The petitioner's case is that even assuming that his possession after the expiry of the lease is not legal, the respondents cannot take forcible possession without recourse to law and that their action is violative of the principles of natural justice and therefore the respondents should be restrained by the issue of a writ of mandamus from taking possession of the property by force without due process of law.

4. In the counter affidavit the respondents did not dispute the fact that the petitioner continued in possession of the premises until 9-10-1981 as a lessee. However, they would contend that under the terms of the lease executed by him on 27-5-1980 he is bound to vacate the building and deliver vacant possession of the same on or before 9-10-1981 that though as per the terms of the lease no notice of termination of tenancy is necessary. With a view to avoid inconvenience to the petitioner and to facilitate him to make alternative arrangements, a registered notice was sent to the petitioner even on 10-8-1981 in answer to which the petitioner came forward with a request for renewal of the lease for five more years though he is not entitled to claim renewal as per the terms of the lease deed. According to the respondents on the expiry of the tenure of lease on

9-10-1981 the petitioner should have handed over possession of the premises especially when his request for extension of the lease was not accepted by the respondents, Since the petitioner did not vacate the premises on 10-10-1981 though he had removed all the things belonging to him except a water cooler, a refrigerator with motor and certain minor items such as bulbs shades etc. after the expiry of the petitioner's lease on 9-10-1981, the first respondent has taken possession of the premises on the morning of 10-10-1981 and, therefore, there is no question of the issue of any writ of mandamus by this Court restraining the respondents from taking possession of the premises forcibly or otherwise. Thus the first thing to be considered is whether possession has already been taken by the respondents as alleged by them or whether the petitioner continues to be in possession on the date of the filing of the writ petition for mandamus.

5. In the counter affidavit filed by the respondents on 17th Oct., 1981 in W. P. 13288/1981 which has been filed by the petitioner for a temporary injunction, it has been stated by the first respondent in the writ petition that even after the affixture of a notice dated 6-10-1981 on the outer door of Kanchana Hotel the petitioner failed to handover possession of the same and was wantonly evading though he has removed major portions of the articles kept in the premises. As such, the first respondent has taken possession of the premises on the morning of 10-10-1981. On the night of 9-10-1981 the Petitioner himself has removed all the things that belong to him, except a water cooler, a refrigerator with motor and certain minor items such as bulbs, shades etc.,. After removing his things which includes all his furniture, tables, chairs, and cooking utensils, he has locked the main hall and lodging rooms and went away. In spite of the notice asking him to be present, he was not present on 10-10-1981 and therefore, the possession of the premises was taken over and inventories were taken in the presence of two independent witnesses and in the presence of the Revenue Divisional Officer, Tiruchirapalli, the Deputy Superintendent of Police, and the Tahsildar, Tiruchirapalli. Thus the respondents have admitted that the petitioner had not completely vacated the premises, as admittedly some of his articles are still in the premises and the premises was found locked when they went to take charge of the premises along with police and revenue officials. It is said that so long as the petitioner has not completely vacated the premises voluntarily and so long as some of his articles continued to be in the premises it cannot be said that the petitioner has been dispossessed on the date of the filing of the writ petition so as to say that this Court has no power to issue a mandamus sought for by the petitioner. It is no doubt true, if on the date of the filing of the petition the petitioner has been thrown out of the premises even by force, then the petitioner cannot seek restoration of possession in these proceedings by getting a writ of mandamus as prayed for by him and his remedy is only to claim damages or other reliefs in other appropriate forums. But if on the date of the filing of the writ petition he is in possession, either physical or constructive, he is entitled to seek the protection of this Court, In the counter affidavit, since it has been admitted that the petitioner did not vacate the Premises though he has removed

major portion of his articles except a water cooler, a refrigerator with motor and certain other minor items such as bulbs, shades etc. and had locked the premises and went away, the petitioner should be taken to have been in possession of the property, and merely because the first respondent had scaled the premises with the help of police and Revenue Officials will not mean that the petitioner has been completely dispossessed. Therefore the question now is whether the respondents could take forcible possession of the Premises from the petitioner even assuming that his possession of the premises is not lawful.

6. Section 108 of the T. P. Act sets out the Tights and liabilities of lessor and lessee. Clause (q) of that section imposes a liability on the lessee to put the lessor into possession of the property on the determination of the lease. Such liability arises whether The lease is terminated by notice or by efflux of time. The question is if the lessee failed to restore vacant possession in breach of obligation referred to in Clause (q) of the Act, what are the remedies available to the lessor and whether those remedies include a right to re-enter the property by force without a tenant surrendering possession of the property voluntarily? On the question of lessors right of re-entry, there is difference between English Law and Indian Law. While English Law recognises the right of the lessor to take forcible possession against the will of the lessee in certain circumstances, the Indian Law does not recognise such right of re-entry without due process of law. This distinction has been pointed out in *K. K. Verma v. Union of India* AIR 1954 Bom. 3518. In that case also, there was a tenancy of Government premises which stood terminated by a valid notice to quit. On The tenant failing to handover possession as required u/s 108(q) the question was whether the Government could take forcible possession of the premises in those circumstances. The Court observed that the law in India is essentially different from English law which treats the quondam lessee who was in possession after the termination of lease as the trespasser, which is not the position in Indian Law, that under the Indian Law, the possession of a tenant who has ceased to be a tenant is protected by law, that although he may not have a right to continue in possession after the termination of the tenancy, his continued possession is judicial which is protected by statute and that u/s 9 of the Specific Relief Act, a tenant who has ceased to be a tenant way sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law. It has been clearly laid down in that case that the Indian Law makes a clear and sharp distinction between a trespasser and an erstwhile tenant, that whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law, that therefore, as far as the Indian Law is concerned, an erstwhile tenant ran never become a trespasser and that therefore, the landlord cannot re-enter and deprive the erstwhile tenant of his possession of the leasehold premises by force, but he can only eject his erstwhile tenant by recourse to law by obtaining a decree for ejectment.

7. *State of Patiala and E.P. State Union, Patiala Vs. Mohinder Singh Natha Singh*, was also a case where the tenancy was under the Government and after the

termination of the lease, the Government took forcible possession and a suit was filed by the quondam lessee u/s 9 of the Specific Relief Act. In those circumstances, the Court held that the general position in law is that regardless of the question of title or the right to possession of the property, the party actually in peaceable and quiet possession shall not be turned out by strong hand, violence or terror, that there is no provision of law which empowers a State Government by force or show of force to evict a person who is in actual possession of property, and that if the State Government were of the opinion that the State had the better right to possession, it is open to them to bring an appropriate action against him and to secure eviction in accordance with the provisions of law.

8. In *Lallu Yeshwant Singh v. Rao Jagdish Singh*, 1968 1 SC WR 307 : AIR 1968 SC 620 the Supreme Court has laid down in more or less similar circumstance where a tenant was forcibly evicted from the leasehold premises and the tenant had filed a suit u/s 9 of the Act it is well-settled that question of title is irrelevant in a suit under that section, that although the tenant may not have a right to continue in possession after the termination of the tenancy, his possession is protected by that section and that the general principle of law is that no act can be done by the strength of one's own hands but help of the law should be taken. In *Yar Muhammad and Another Vs. Lakshmi Das and Others*, the Full Bench of Allahabad High Court in dealing with the scope of Section 9 of the Specific Relief Act has observed (at pp. 4-5):

"No question of title either of the plaintiff or of the defendant can be raised or gone into that case (under Section 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular the suit and the person who has the real title or even the better title cannot, therefore, be prejudiced any way by a decree in such a suit, It will always be open to him to establish his title in a regular suit and to recover back possession Law respects possession even if there is no title to Support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. No person can be allowed to become a judge in his own cause."

The following observation of the Privy Council in *Midnapur Zamindary Co. Ltd. v. Narash Narayan Roy*, 51 Ind App 293 : AIR 1924 PC 144 is pertinent in this connection

"In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court."

9. In *Badrilal Vs. Municipal Corporation of Indore*, it has been laid down that the person who is in lawful occupation of the premises does not become trespasser and if he does not become a tenant holding over, he would be a tenant by

sufferance. In *Chandra and Co. Vs. State of Rajasthan and Others*, in more or less similar circumstances as in this case it was held that the State is not free to act in a high-handed manner as to dispossess a person in juridical possession of a property otherwise than in due course of law, that a person who is in peaceful possession of property cannot be deprived of the possession of the same by the State or its Officers, except in accordance with law, that in a case where the State or its Officers have the property in his possession without any authority of law, it is open to him to seek redress against the aforeaid unlawful action of the State and its officers by invoking the jurisdiction of the High Court under Article 226 of the Constitution and that the State as owner of property does not enjoy any higher rights than the citizen in the matter of taking possession dispossessed such person of its property.

10. Thus the Preponderance of the judicial opinion is that the tenant in possession of the leasehold property after the termination of the lease cannot be dispossessed by, force except under due authority of law and the position is not different in the case of a tenancy under the Government; that even", if forcible possession had been taken by the Government as a quondam lessor, the quondam tenant is entitled to get back possession of the property u/s 9 of the Specific Relief Act.

11. The learned Government Pleader appearing for the respondents would rely on a decision of a Division Bench of this Court in *Neyveli Lignite Corporation Ltd. and Others Vs. K.S. Naravana Iyer*, do not see how the said judgment will apply to the facts of this case. In that case, a person who had already been dispossessed filed a suit u/s 9 of the Specific Relief Act to recover possession and it was found that the tenant did not insist upon restoration of possession in his notice prior to suit, that he himself voluntarily removed all his moveables at the request of the lessor and that therefore, he is not entitled to seek possession u/s 9 of the Specific Relief Act. The ultimate decision in that case was based on the fact that the tenant did not resist possession being taken by the lessor and the tenant vacated without resistance at the request of the lessor and therefore, he is not entitled to invoke Section 9 of the, Specific Relief Act. The ultimate decision in that case is not applicable to the facts of this case where the tenant has been found to be in possession at the time he seeks the aid of the Court. As admittedly, some of the articles are still found inside the premises though the premises had been sealed from outside by the respondents with the help of the police. The said decision far from helping the respondents, in fact supports the legal submissions made by the petitioner's counsel. In that case, the Bench has clearly observed that the landlord in India, even if the lease had expired, will not be entitled to dispossess his tenant except by due process of law, that the principles of English law that a tenant whose term of the lease had expired could not complain against his landlord's entry of his property, so long as it has been peaceably made is not applicable to India, and that under Indian Laws a person continuing in possession. of the property after the expiry of his tenancy, is not regarded as a trespasser, for his entry was lawful and as such possession would

both on principle and authority be entitled to protection u/s 9 of the Specific Relief Act.

12. The learned counsel for the respondents would say that as the respondents had already entered into possession of the premises, a writ of mandamus cannot lie and the petitioner's remedy is only to move the Civil Court u/s 9 of the Specific Relief Act. However, it is already seen that the petitioner has not removed all his articles from the premises, and it has been admitted in the counter-affidavit that some of the petitioner's articles are still inside the premises. Therefore, the petitioner cannot be said to have been dispossessed and the respondents cannot be taken to have got vacant possession of the premises.

13. In this view of the matter the writ petition has to be allowed and accordingly a writ of mandamus will issue as prayed for by the petitioner. This order is without prejudice to the rights of the respondents to take possession under due process of law. The petitioner will have his costs from the responding. Counsel's fee Rs. 250.

14. Petition allowed.