

**(1996) 07 KAR CK 0049**

**In the Karnataka High Court**

**Case No : Writ Petns. No's. 288 and 2170 of 1996**

M/s. Hanuman Silks and etc.

APPELLANT

Vs

Karnataka Industrial Areas Development Board, Bangalore  
and others

RESPONDENT

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**Date of Decision : 24-07-1996**

**Acts Referred:**

Karnataka Industrial Area Development Act, 1966 — Section 33, 34, 35  
Karnataka Rent Control Act, 1961 — Section 13  
Specific Relief Act, 1963 — Section 6

**Citation : AIR 1997 Kar 134 : (1996) ILR (Kar) 3384 : (1996) 7 KarLJ 277**

**Hon'ble Judges : R.V. Raveendran, J**

**Bench : Single Bench**

**Advocate : Jayakumar S. Patil, for the Appellant; Udayashankar, AGA, A.B. Hinchigeri and Patil and Patil, for the Respondent**

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## **Judgement**

1. Karnataka Industrial Areas Development Board, the first respondent herein, is a statutory body established under the Karnataka Industrial Areas Development Act, 1966 ("the Act" for short). It has established and developed an industrial layout in Chickaballapur known as Chickaballapur Industrial Area.

2. The Board allotted Plot No. 1A and 1B in the said layout each measuring 4122 Sq.M. to the two petitioners. The Board issued confirmatory letters of allotment to the petitioners 4/6-2-1993 and 12-1-1993 respectively. The Board delivered possession of the said plots to the petitioners on 6-2-1993 and 24-6-1993. The Board entered into lease-cum-sale agreements with the petitioners on 18-8-1993 and 19-8-1993. By clause 2(p)(1) of the said agreements, the petitioners covenanted with the Board to complete the civil construction work and erection of the factory within 12 months, and to commence production within 24 months, from the date of confirmatory letter of allotment. Clause 4 of the said agreements provides that, if the allottee/lessee committed breach of any of the lessee's covenants, the Board (lessor) may re-enter upon the leased premises.

3. As the petitioners did not commence the civil construction work at all and consequently did not complete the construction nor commence production before 6-2-1995 and 12-1-1995 respectively, the Board issued notices dated 16-2-1995 and 15-2-1995 to the petitioners calling upon them to show cause why action for resumption should not be taken under clause 4 of the agreement. The petitioners gave their replies dated 4-4-1995 and 30-3-1995 stating that for want of water supply and for want of financial assistances, it was not possible for them to take up the construction and sought extension by one year, to complete the construction and commence production. Thereafter, by letters dated 22/23-6-1995 (Annexures "F" and "E" respectively in the two petitions), the Board informed the petitioners that the petitioners had failed to implement the project before the stipulated date and the reasons given for non-compliance were not convincing and therefore, their request for extension of time was rejected; and the Board further notified the petitioners that in exercise of its powers under clause 4 of the agreements, the plots allotted to them will be resumed on 25-7-1995 at 11.00 a.m. and on such resumption, forfeiture clauses 4 and 11 will become operative. Petitioners again sought extension of time by their letters dated 5-7-1995.

4. On 25-7-1995, the Board took possession of both the plots (Plots 1A and 1B) as notified in its letter dated 22/23-6-1995 and a mahazar was drawn up in that behalf. Thereafter, the Board sent letters dated 28-7-1995 (Annexures H & F respectively in the two petitions) in reply to petitioners' letters dated 5-7-1995, informing them that the plots were already resumed on 25-7-1995, but they may however, meet the Executive Member of the Board on 8-8-1995 for discussions. It would appear that the petitioners' representatives met the Executive Member accordingly on 9-8-1995. But there is conflict as to what transpired at such meeting. While the petitioners claim that the Board agreed to give back the plots subject to payment of an increased price, the Board contends that the discussion was only about refund of the amounts paid by the petitioners.

5. By letter dated 31-10-1995, the Board allotted the said two plots (Plots 1A and 1B) which were so resumed from the petitioners, to the fourth respondent. Possession of the plots were delivered by the Board to fourth respondent under possession certificate dated 10-11-1995 and a lease-cum-sale agreement was entered into between the Board and fourth respondent on 16-11-1995 and registered on 25-11-1995. Fourth respondent submitted a plan for construction in the said plots and the Board granted a licence on 11-1-1996.

6. Thereafter, petitioners filed these two petitions on 2-1-1996 and 20-1-1996 and sought quashing of letters of resumption dated 22/23-6-1995 and letters dated 28-7-1995 informing petitioners about the resumption of their plots. This Court granted Interim stay of Annexures "F" and "H" in W. P. No. 288/95 on 3-1-1996 and granted interim stay of Annexures "E" and "F" in W.P.No. 2170/96 on 24-1-1996.

7. The petitioners contend that they could not commence and complete

construction for reasons beyond their control; that the Board ought to have granted extension sought by them for completing construction and commencing production as the agreement provides for such extension; that the power of re-entry/resumption reserved in the agreement does not authorise the Board to forcibly dispossess the lessees from the plot, even if the termination of the lease was valid; that the Board could not have resumed the plot without recourse to law, that is either by filing a suit for adjustment possession or by initiating eviction proceedings underline Karnataka Public Premises (Eviction of Unauthorised Occupants); Act, 1974 ("Public Premises Act" for short); and that the Board was guilty of discrimination and favouritism as Board has not taken any action for cancellation in the case of several prior allottees who have also not commenced or completed construction. Petitioners also contend that the Board's action in forcibly resuming the plots being illegal, the consequential allotment and delivery of possession to fourth respondent on lease-cum-sale basis is also wholly illegal and non est in the eye of law.

8. The Board contends that having regard to clause (4) of the lease-cum-sale agreement, and its powers under S. 14(f)(ii) of the Act and Regn. 10 of the KIADB Regulations, it could resume possession of the plots directly and forcibly, without recourse to any legal action or eviction proceedings. The Board contends that it is statutorily empowered to resume possession from defaulting lessees and therefore, it can take possession without recourse to a civil suit or to a proceeding under the Public Premises Act; and such resumption of possession by the Board, from lessees, will have to be considered as an action in accordance with law. It is further contended that having regard to the defaults committed by the petitioners, the Board was justified in terminating that leases and taking possession of the plots. The Board also contended that the rights and obligations of the parties were governed by contract and the action to resume the plots was as a consequence of breach by petitioners; and as the matter was wholly within the sphere of contractual obligations, writ jurisdiction should not be exercised to examine or determine disputed questions relating to performance and breach of contracts. The Board also contended that the petition is liable to be rejected also on the ground of delay and laches as petitioners have approached this Court long after resumption of the plots and in the meanwhile, the Board had already allotted and delivered the plots to another needy applicant and any interference with the orders of resumption will affect the rights vested in a third party.

9. The fourth respondent contended that the said two plots were allotted in lieu of another plot (Plot 2 measuring 11649 Sq.M.) which had been earlier allotted to it by the Board on 12-5-1993 and delivered on 26-8-1993; that the acquisition of the land wherein the said Plot No. 2 was situated was quashed by this Court in a litigation by the previous owner of the land against the Board and consequently the fourth respondent lost possession of the said plot; that therefore the Board had to deliver an alternative plot to it; and Plots 1A and 1B together, are of an extent which is less than the extent of Plot No. 2 earlier allotted to it; and it had invested huge amounts and made large commitments in pursuance of the earlier

allotment of Plot No. 2 and the subsequent allotment of Plots 1A and 1B; and if at this distance of time, the allotment in its favour is again interfered with, it will be put to irreparable loss and hardship; and therefore this Court should not disturb the resumption of plots from petitioners, even if such resumption is found to be without the authority of law.

10. On the above factual background and contentions, the following questions arise for consideration :

a) Whether the Board can take possession of the plots in the possession of its lessees, without having recourse to a civil suit for possession or to an eviction proceedings under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974;

b) Whether the validity of the action of the Board, in regard to termination of lease and resumption, relating to a contract can be considered in a writ proceedings; and

c) Whether the delay on the part of the petitioners in approaching this Court disentitles the petitioners to any relief.

Re : Point (a) :

11. The Board contends that the provisions of KIAD Act, in particular S. 14(4)(ii) empower the Board to take possession from lessees, without recourse to any proceedings for eviction. To examine this contention, a brief reference to the relevant provisions of the Act becomes necessary.

11.1 The KIAD Act is enacted to make special provisions for securing the establishment of industrial areas in the State and generally to promote the establishment and orderly development of industries therein, and for that purpose, to establish an Industrial Areas Development Board, and for purposes connected with such matters. Chapter II deals with the declaration and alteration of industrial areas. Chapter III deals with establishment and constitution of the Board. Chapter IV deals with functions and powers of the Board and Chapter V deals with Finance, Accounts and Audit of the Board. Chapter VI deals with application of Public Premises Act and non-application of Karnataka Rent Control Act, 1961 to the premises of the Board. Chapter VII deals with acquisition and disposal of land. Chapter VIII contains the supplementary and miscellaneous provisions.

11.2 Section 13 in Chapter IV defines the functions of the Board as generally to promote and assist in the rapid and orderly establishment, growth and development of industries in industrial areas; and in particular, to develop industrial areas declared by the State Government and make them available for undertakings, to establish themselves; to establish, maintain, develop and manage industrial estates within industrial areas; and to undertake such schemes or programmes of works for the furtherance of the purposes for which the Board is established and for all purposes connected therewith.

11.3 Section 14 enumerates the general power of the Board. It provides that subject to the provisions of the Act, the Board shall have the power :

- (a) to acquire and hold such property, both movable and immovable as the Board may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Board;
- (b) to purchase by agreement or to take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions;
- (c) to provide or cause to be provided amenities and common facilities in industrial areas and construct and maintain or cause to be maintained works and buildings therefore;
- (d) to make available buildings on lease or sale or lease-cum-sale to industrialists or persons intending to start industrial undertakings;
- (e) to construct buildings for the housing of the employees of industries;
- (f)(i) to allot to suitable persons factory sheds or such buildings or parts of building including residential tenements in the industrial areas established or developed by the Board;
- (ii) to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any terms or conditions of their allotments;
- (g) to delegate any of its powers generally or specially to the Executive Member;
- (h) to enter into and perform all such contracts as it may consider necessary or expedient for the carrying out of any of its functions; and
- (i) to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions, and the carrying into effect the purposes of this Act.

11.4 Section 25 in Chapter VI of the KIAD Act providing for application of Karnataka Act 32/1974, reads as follows :

- (1) The State Government, may, by notification provide from such date as may be specified in such notification that the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, shall apply to Premises belonging to, vesting in, or leased by, the Board, as that Act applies in relation to public premises, but subject to the provisions of sub-sec. (2).
- (2) On the notification being issued under sub-sec. (1), the aforesaid Act and the Rules made thereunder, shall apply to the premises of the Board with following modifications, that is to say -
  - (a) the State Government may appoint any officer whether under the

Government or the Board, as it thinks fit, to be the competent officer for the purposes of the aforesaid Act;

(b) reference to "Public Premises" in that Act and those Rules shall be deemed to be reference to premises of the Board and references to the "State Government" in Ss. 6, 7, 8, 14, 15, 16 and 17 of that Act shall be deemed to be references to the Board.

11.5 Section 33 in Chapter VIII of KIAD Act provides that if the Board is satisfied that if a lessee of any land in an industrial area fails to provide any amenity or carry out any development of the land, the Board may after due notice in that behalf, may itself provide such amenity or carry out such development at the expense of the lessee. Section 34 provides for penalty for construction or use of land and building contrary to terms of holding. Section 34A provides for demolition or alteration of unauthorised construction or alteration. Section 35 of the Act enables a person authorised by the Board to enter upon any land for the purpose of inspection, survey, measurement, valuation or enquiry. Section 41 enables the Board by notification, to make regulations consistent with the Act and Rules thereunder, to carry out the purposes of the Act with the previous approval of the State Government.

11.6 Nowhere does the Act provides for the Board taking back possession of the leased plots from the lessees, without recourse to eviction proceedings, whatever be the circumstances. On the other hand, the Act contains a specific provision (S. 25) providing for application of Public Premises Act to premises leased by the Board. The absence of any provision enabling the Board to take possession from lessees and the express provision for making Public Premises Act applicable to the premises leased by the Board, leads to the inescapable conclusion that termination of leases and eviction of lessees are left to be governed by contract and general law. Therefore, any act of forcible dispossession of a lessee by the Board will be an act otherwise than in accordance with law.

11.7 It is well settled that a lessor with the best of title cannot resort to forcible dispossession. Law in India does not recognise in the lessor a right to extra-judicial re-entry unless specifically provided for bylaw. Such a right cannot be inferred. It is a part of concept of "Rule of Law" that no claim to a right to dispossess by the use of force, without recourse to a procedure in accordance with law, is recognised or countenanced in India. The lessor can dispossess or evict the lessee only by having recourse to law and by obtaining an order or decree for eviction/selectmen or in a manner known to law -- See *Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy* reported in AIR 1924 PC 144, cited with approval by the Supreme Court in *Lallu Yeshwant Singh v. Rap Jagdish Singh* reported in AIR 1968 SC 620; *K.K. Verma and Another Vs. Union of India and Another*, ; *Patil Exhibitors (Pvt.) Ltd. Vs. The Corporation of the City of Bangalore*, .

11.8 When a Statute intends to confer on anyone, the power to take possession

without recourse to an eviction or ejectment proceeding, the Act will have to clearly state that the authority or a person authorised, can take possession, and for that purpose, use such force as may be necessary. Reference may be made to S. 5(2) of the Public Premises Act, S. 3(7) of the Karnataka Acquisition of Lands Tor Grant of House Sites Act, 1972 and S. 269UE(3) of Income Tax Act. 1961, as illustrations. In fact, KIAD Act itself contains such a provision, viz., Sec. 28(1) which provides that if a person whose land has vested in the State Government free from all encumbrances, on publication of a declaration under S. 28(4) of the Act, fails to deliver the land, the State Government or any officer authorised by the State Government, may take possession of the land and may for that purpose use such force as may be necessary. The illustrations will be incomplete without reference to O. 21. R. 35 of CPC which provides that, where the decree is for delivery of immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, and, if necessary, by removing any person bound by the decree who refuses to vacate such property. The absence of grant of such power necessarily means that, taking possession can be only by an eviction proceedings, in a manner known to law.

11.9 The Board placed strong reliance on S. 14(f)(ii) to contend that the Statute enables it to evict allottees and that enables the Board to take possession from lessees, without recourse to any action for eviction. The word "evict" is not synonymous with the word "dispossess". Normally, the word "evict" connotes lawful dispossession by process of law, that is to recover possession by virtue of a judgment or order of a Court of Law or empowered authority. Thus the power to "evict the allottee" given to the Board is the power to remove the allottee from possession by an "eviction proceedings" and not a power to forcibly and directly dispossess an allottee without recourse to an eviction proceedings. The Act does not lay down any procedure to evict tenants. Hence the word "evict" in S. 14(4)(ii) only means to take possession in the manner provided in law. At all events, S. 14(4)(ii) does not apply to allottees of plots or sites. Section 14(f)(ii) empowers the Board to modify or rescind such allotments, including the right and power to evict the allottees concerned, on breach of any of the terms or conditions of their allotments. The use of the words "such allotments" and "allottees concerned" in S. 14(f)(ii) shows that the bower to "evict" is in respect of allottees mentioned in sub-clause (1) of S. 14(f), that is, all plots of factory sheds or part of buildings or residential tenements and not allottees of plots.

12. The Board next contended that "the Regulations Governing disposal of lands by KIADB, 1969" are made by the Board in exercise of its power under S. 41 of KIAD Act and the said Regulations were said before the State Legislature under S. 42 and therefore, they have statutory force. The said Regulations provide that the Board shall decide the manner of disposal of land/shed in each industrial area or part thereof, i.e., whether by lease, lease-cum-sale, sale, auction sale, auction lease, assignment or otherwise; and in each case, the Board will also have the discretion to decide the detailed conditions which shall be binding on the applicant (Regulations); and for allotment of plots to any applicant and execution

of agreements in the prescribed form in regard to allotments made (Regulation 10) it is contended that the lease-cum-sale agreements with petitioners, providing for re-entry and resumption by the Board on breach by the lessees, were entered into by the Board, in the form prescribed under Regulation 10(c) of statutory Regulations; and therefore such agreements, which are entered by the Board in the manner prescribed in the Regulations, also have statutory force; and as such agreements provide for re-entry by the Board, into plots leased to allottees, the Board has a statutory power of re-entry. This argument, to say the least, is not tenable. Firstly, the Regulations do not provide for re-entry by the Board, into leased plots. Secondly, execution of an agreement in the form prescribed under the Regulations, will not make the agreement, "a statutory instrument" as contended by the Board. Therefore, the contention that the Board has a statutory power of re-entry is liable to be rejected.

13. It is next contended by the Board, that the lease-cum-sale agreement gives the Board the power to re-enter upon the premises and such power, even though not statutory, is contractual and therefore, it can take possession of the leased plot without initiating any action for ejectment.

13.1 The relevant portions of Clause 4 of the lease-cum-sale agreement relied on by the Board is extracted below :--

"4. If the said rent hereby reserved shall be in arrears for the space of thirty days whether the same shall have been legally demanded or not, if and whenever there shall be breach of any of the covenants by the lessee hereinbefore/after contained, the lessor may re-enter upon any part of the demised premises in the name of the whole and thereupon the term hereby granted and right to any renewal thereof shall absolutely cease and determine and in that case, 99% of the cost of land as indicated in clause (1) of this agreement (premium and rent) together with the commitment charges, earnest money deposit and interest due and payable from the date of taking possession to the date of resumption of the land by the Board shall be forfeited to the lessor subject to the refund of amount not exceeding 84%/89% of cost of land as indicated in clause (1), only to such of the financial institutions or banks who have financed the lessee towards the cost of land and in addition, no compensation shall be payable to the lessee on account of the building or improvements built or carried out on demised premises, or claimed by the lessee on account of the building or improvements built or made, provided always that except for non-payment of rent as aforesaid, the power of re-entry hereinbefore contained shall not be exercised unless and until the lessor or the Executive Member on behalf of the lessor shall have given to the lessee or left on some part of the demised premises a notice in writing of his intention to enter and of the specific breach or breaches of covenants in respect of which, the re-entry is intended to be made and default shall have been made by the lessee in remedying such breach or breaches within 120 days after the giving or leaving of such notice.



13.2 The meaning of the word "re-entry" came up for consideration of the Supreme Court in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, . The Supreme Court held as follows (para 15) :

"A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression "reentry" in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination, is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due cause of law. In the present case, the fact that the Lessor is the State does not place it in any higher or better position .....

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly prohibited from taking possession otherwise than in due course of law."

13.3 The learned counsel for the Board, on the other hand, relied on two decisions of this Court to contend that the Board can take possession without having recourse to law. The first is a decision of Division Bench in *Hamsalakshmi Enterprises v. The Secretary, Department of Commerce and Industries* (W.A. 1118/91, disposed of 10-4-1991) wherein the Division Bench observed that if the right of re-entry has been exercised in terms of the lease agreement, resort to eviction under the Public Premises Act would not apply. But the said observations were made while examining the question whether the Board can direct the removal of an unauthorised construction made by an allottee, after the land has been resumed by the Board. In fact, the action of the Board in taking possession was not challenged by the allottee. The question whether the Board can resume possession otherwise than in accordance with law, did not arise for consideration in that case. The next decision relied on by the Board is that of *H. Nagaraj v. KIADB*, (W.P. No. 13767/1994) disposed of on 12-1-1995). That was a case where though a plot was allotted by the Board, either a Possession Certificate was issued nor any lease-cum-sale agreement was executed. This Court therefore held that the allottee had acquired no legal right on the basis of a proposal for allotment. That decision is of no assistance to the Board.

13.4 Applying the principles said down in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , it has to be held that the power of re-entry and "resumption" that is reserved by the Board in the lease-cum-sale agreement, does not authorise the Board to directly or forcibly resume possession of the leased land, on termination of the lease. It only authorises the Board to take possession of the leased land in accordance with law. In this case, that can be either by having recourse to the provisions of the Public Premises Act or by filing" a Civil Suit for possession not otherwise.

Re: Point (b) :

14. Several contentions are advanced and several documents are relied by both the sides on the question whether there was any justification for the Board to terminate the lease and on the question whether the termination is wrongful. Whether the petitioners committed any breach of their covenants under the Lease-cum-Sale Agreement and whether there was any justification for failure to commence and complete construction and commence production or whether there was any justification for the Board to terminate the lease, are not questions that can be examined in a writ petition.

14.1. The Supreme Court in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, held as follows (Para 201):--

"The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. Those questions cannot be effectively disposed of in this petition under Art, 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc., are foreign to the scope of Art 31 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding.

14.2 Following the said decision in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , Supreme Court observed :

"On a consideration of the matter we think, in the facts and circumstances of this case, the High Court should have abstained from the examination of the legality or correctness of the purported cancellation of the lease which involved resolution of disputes on questions of fact as well..... Accordingly, we hold that the question whether the purported forfeiture and cancellation of the lease were valid or not should not have been allowed to be agitated in proceedings under Art. 226.

14.3 In *Chamundi Roller Flour Mills Ltd. Vs. Senior Regional Manager, FCI*, this Court stat'd the principles relating to interference under Art. 226, in regard to contractual matters, thus:

(i) When public authority has already entered into a contract the relations are no longer governed by Constitutional provisions but by contract.

(ii) Within the field of contract, violation of a Constitutional provision including Art. 14 thereof cannot arise and all that a party can claim are only rights under a contract and such rights can be enforced only through Civil Proceedings and not through Writ Proceedings, which are inapt for deciding disputed questions of fact.

(iii) The State or its agency or instrumentality, and the private party stand on the same footing in the Law of Contract. State does not enjoy any special Governmental or statutory power.

(iv) Nor will principles of natural Justice essential to State action in other contexts have any relevance or application when the impugned action is in pursuance of contract.

The only exceptions being:

(i) When the contract is in exercise of statutory power;

(ii) Where State is liable pursuant to promissory estoppel;

(iii) Where State is at "threshold" of entering into contract in choosing the other party with which it wishes to deal.

14.3A In *Kiabd v. Sohanlal Sisodia* (W.A. No. 2416/1990 decided on 21-3-1991) a Division Bench of this Court held as follows:--

"..... We have not the slightest hesitation in holding that Section 14 of the Karnataka Industrial Areas Development Act, 1966 merely catalogues the powers which could be exercised by the Corporation created u/s 5 of the Act. Therefore, when by exercise of that power, a contract is entered into with reference to allotment u/s 14(f) (i) and (ii), the rights of the parties are governed by that contract and contract alone. The argument which found favour with the learned single Judge that by reason of these two clauses viz., (f)(i) and (ii) a Statutory right enures in favour of the allottee cannot be supported in law. The vital distinction will have to be borne in mind as to the source of power and the exercise of the power. Section 14 of the Act is the source of power for a Statutory Corporation, without which power, the exercise of such power would itself be ultra vires. On the contrary, when that power is exercised and it gets embodied in a contract, the relationship is purely contractual. Therefore, the conclusion of the learned single Judge that a statutory right enures in favour of the allottee and on that ground, the jurisdiction under Art. 226 of the Constitution of India could be invoked, cannot be held to be a correct law."

14.4 When the said principles are applied, it is clear that questions as to whether the termination of lease is valid or not is not a matter that can be allowed to be agitated in a writ proceeding. Similarly questions relating to performance and breach of contract, and consequences of non-performance and breach are also not matters that can be adjudicated under Art. 226.

14.5 But the action of an authority proposing to dispossess a Lessee without recourse to eviction proceedings as per law, or action of the Board taking forcible possession, can however, be challenged in a proceeding under Art. 226, even though relating to a contract. This is so, as such action is ex-facie arbitrary and high handed and violative of Art. 14 of the Constitution of India and is not a right flowing from the contract. It does not also involved determination of any disputed question of fact. This is evident from the observations in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , extracted above. In this behalf reference may also be made to the following observations of the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs.*

State of U.P. and Others, :

"However, to the extent, challenge is made on the ground of violation of Art. 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Art. 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Art. 14 of non-arbitrariness at the hands of the State in any of its actions."

Re: Point (c):

15. The facts disclose that possession of the two plots was taken on 25-7-1995 after giving notices on 16-2-1995 and 22/23-6-1995. In the notice dated 16-2-1995, the petitioners' attention was expressly drawn to the provisions of the agreement and the consequences of nonfulfilment of its obligations. Again by notice dated 22-6-1995, petitioners were notified that their leases were terminated and their plots would be resumed on 25-7-1995. The fact that on 25-7-1995 the Board took back possession of the plots is not disputed. Though the petitioners gave letters requesting for extension of time on 5-7-1995 and met the Executive Member of the Board in August 1995, they apparently did not pursue the matter thereafter. They, however, claim to have sent a letter dated 13-9-1995 stating that they were making arrangements for necessary finance for speedy construction and implementation of the Project and that they were making arrangements for water from a nearby borewell; and that they were agreeable to pay the difference in cost of the plots at the current rates prevailing and requesting the Board to inform the amount to be paid as difference in rate. Though the letter also refers to the meeting held on 9-8-1995, there is no reference to any assurance said to have been made by the Executive Member of the Board that on payment of the difference in cost, the plot will be given back to the petitioners. The Writ Petitions were filed only on 2-1-1996 and 20-1-1996. The Board allotted the plots to fourth respondent on 31-10-1995, delivered possession on 10-11-1995 and executed a Lease-cum-sale Agreement with fourth respondent on 16-11-1995. In the circumstances, petitioners cannot now contend that they were expecting a further communication from the Board, and, therefore, did not take any action. The inaction from 25-7-1995 to the date of filing of the writ petitions is fatal to the cases of the petitioners because, in the meanwhile, the Board having taken possession, whether rightly or wrongly, has made a fresh allotment, delivered possession and entered into a lease-cum-sale agreement with the fourth respondent. It should also be noticed that fourth respondent is not a new applicant, but an earlier allottee of another plot who lost its plot for no fault of its, on account of the litigation between the Board and the previous owners of the land. Any interference now will upset the rights of a third party, namely the fourth Respondent.

15.1. The Supreme Court in *Tilokchand and Motichand and Others Vs. H.B.*

Munshi and Another, observed thus, on the effect of delay (para 10):--

"If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction."

15.2 In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , even though the action of the Authority was found to be illegal, the Supreme Court refused to grant relief on account of delay. The following observations are relevant (at p. 1652) :--

"..... Moreover, the Writ Petition was filed by the appellant more than five months after the acceptance of the tender of 4th respondent and during this period, 4th respondent incurred considerable expenditure aggregating to about Rs. 1,25,000 in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequitable to set aside the contracts of fourth respondent at the instance of the appellant. The position would have been different if the appellant had filed the Writ Petition immediately after the acceptance of the tender of 4th respondent but the appellant allowed a period of over five months to elapse during which 4th respondent altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion under Art. 226 of the Constitution."

15.3 Even though the action of the Board in taking possession otherwise than in accordance with law can be declared to be illegal, having regard to the effect of delay on the facts and circumstances of the case and the accrual of rights to the fourth respondent before the filing of these petitions, the petitioners cannot be given any relief in these cases. If the petitioners had approached this Court either in August or September 1995, the position would have been different and as the Board's action was illegal, the petitioners would have been entitled to restoration of possession. The petitioners could have also filed suits under S. 6 of the Special Relief Act, 1963 within six months of the date of dispossession. They did not do so. As petitioners have approached this Court belatedly, they are not entitled to any relief.

16. It is however necessary to record a fair offer made by the learned counsel for the Board. He stated that plot Nos.24/A and 15A in the layout are presently available for allotment and as a gesture of goodwill, the Board is even now ready to allot the said plots to the petitioners at the same rate at which the resumed plots were allotted to them, provided the petitioners unconditionally approach the

Board for allotment of the said plots within 45 days from today.

Recording the said submission, these petitions are dismissed.

17. Petitions dismissed.