
(1999) 05 CAL CK 0012
In the Calcutta High Court
Case No : M.A.T. No. 2970 of 1997

Priya Brata Maity

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 07-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 144, 151
West Bengal Municipal Act, 1993 — Section 223, 223(1)

Citation : AIR 2000 Cal 32

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Advocate : M.C. Das and Goutam Mukherjee, Pratap Roy and Soumen Dutta, for the Appellant; Asok Dey and Samiran Giri, for the Respondent

Judgement

S.N. Bhattacharjee, J.—This appeal directed against the order dated 29-9-1997 passed by a single Judge of this Court in W.P. No. 9960(W)/97 projects a disturbing picture where in an ordinary private dispute between the landlord and tenant, the statutory public authority joined hands with one side in deliberate defiance of the Court's order and in brazen violation of the statutory rules thereby causing irreparable loss and injury to other.

2. Sri Haripada Khalsa, the writ petitioner/respondent was a tenant under Sri Priya Brata Maity, the appellant, in the disputed premises at Manickchak, Contai, Dist., Midnapore since February, 1975 at a rental of Rs. 150/- per month. Following a dispute between the parties regarding repair works of the tenanted portion of the building and alleged threat of eviction by the son of the landlord, the tenant filed a T.S. No. 134 of 1996 in the Court of 1st Civil Judge, Junior Division at Contai against the landlord and obtained an order for interim injunction on 14-8-1996 restraining the landlord from evicting the tenant from the suit premises till the disposal of the petition for temporary injunction. Sensing that the landlord had been trying to evict him by demolishing the premises through Municipality the respondent-tenant informed the Chairman,

Contai Municipality of the order of injunction and by his letter dated 14-3-1997 sent by Regd. Post with A/D which was received by the Chairman. (Annexure "B" of the affidavit of the petitioner for appr. relief). The tenant also moved a writ petition (W.P. No. 9960(W)/97) against the Contai Municipality and its Chairman impleading the landlord for restraining the respondents from demolishing the premises without due process of law. The learned trial Judge disposed of the writ petition ex parte by his order dated 29-9-1997 directing the Municipal authority not to take steps for demolition of the disputed premises without due process of law. The order was communicated to the respondents including the Contai Municipality (Annexure "A" to the stay petition dated.) by the learned Advocate for the petitioner by his letter dated 29-7-1997. On 11-9-1997 respondent No. 5 preferred the instant appeal against that order dated 29-7-1997 and moved the stay petition before the Division Bench of this Court contending, Inter alia, in para 10 thereof :--

That in the meanwhile the writ petitioner/ opposite filed a suit being Title Suit No. 134/ 96 before the learned Court below"against the appellant for declaration of tenancy right. Accordingly the application for Injunction in connection with the said suit was also filed. But still now no injunction has been granted on the basis of the said application and the same has been fixed on 12-12-1997."

The Division Bench passed an order dated 1-6-1998 ex parte In the following terms :--

"After hearing the learned counsel for the appellant/petitioner and considering the facts and circumstances of the case the appeal and the application are disposed of by directing the authority of the Contai Municipality to proceed with the demolition, if any, in respect of the premises-in-question after taking into consideration of the report submitted by Mr. D.K. Chowan, S.A.E. Contai Municipality and after complying with the statutory provisions and after giving notice and opportunity to the landlord and tenant and passed order in the matter in accordance with law."

On the tenant-respondent's petition explaining the absence of learned counsel due to "Rail Track Obstruction" the Division Bench was pleased to recall the order dated 1-6-1998 by its order dated 6-6-1998.

On 4-8-1998 the respondent-tenant filed a petition before this Bench praying for appropriate relief disclosing subsequent developments since 6-6-1998,

"In pursuance to the direction a notice was served on 10th June, 1998 upon the petitioners and directed him to appear at 6 p.m. on 11th June, 1998 in the office of Contai Municipality. In obedience to the notice the petitioner appeared and filed an application addressed to the Chairman, Contai Municipality and prayed for contending inter alia that an application addressed to the Chairman, Contai Municipality and prayed for contending inter alia that an application for recalling the order dated 1st June, 1998 is pending before the Hon"ble High Court and the said copy was served upon the learned Advocate Mr. Parimal Kumar Das who is

appearing on behalf of Contai Municipality. A copy of the said notice and also the application are filed herewith and marked as Annexure "C".

It is further alleged that on 14-6-1998 and 15-6-1998, the "Municipal Authorities demolished a portion of the premises without complying with the provision u/s 223 of the W.B. Municipal Act.

3. On 23-3-1999 we ordered that keeping in view of the fact that the appeal was once heard and disposed, but the said order was subsequently recalled, no question of grant of any stay arises, at this stage.

4. The appeal came up for hearing on 8-4-1999 when the appellant-landlord prayed for withdrawal of the appeal as his purpose had been achieved in the wake of demolition of the premises by Contai Municipality. The prayer was vehemently opposed by the respondent-tenant petitioner. This Court passed the following order :--

"Having heard the learned counsel for the parties, we do not permit the appellant to withdraw the appeal, the reason wherefor will be assigned along with the judgment.

It is placed on record that the learned counsel for the parties have addressed us on the merit of the appeal and also brought subsequent events to our notice.

Till an appropriate order is passed, the appellant shall not dispossess the respondent and shall not create any encumbrance or transfer in respect of the property in question."

5. Mr. Asoke De, appearing on behalf of the respondent-tenant argued that the appellant should not be allowed to withdraw the appeal after having reaped the benefits of the order of this Court by suppressing the material facts and making a false statement on affidavit before this Court. According to him, when the parties were called by the Municipal authorities on 11-6-1998 the order of the Division Bench dated 1-6-1998 was already recalled by order dated 6-6-1998 and the respondent Informed both the appellant and the Municipal authorities of this fact. This statement regarding communication has not been controverted by affidavit in opposition

6. Mr. De has cited decisions reported in Uday Kumar Paul Vs. Smt. Mira Paul, and R. Ramamurthi Iyer Vs. Raja V. Rajeswara Rao, In (1994) 1 Cal LT (HC) 232 the Division Bench of this H.C. sitting In civil revisional Jurisdiction arising out of a matrimonial proceeding,

"Order 23, Rule 1 may entitle the plaintiff to withdraw/abandonment the suit but there is nothing in that provision to oblige the Court to be a witness to the abuse of the same by one party for the purpose of depriving another of his/her right of sustenance and survival. There is nothing in the said provision to oblige the Court to dispose of the application thereunder immediately regardless of the other considerations and to the prejudice of pending statutory applications,

intended for benefit, pendente lite with retrospective effect. It may not be open to the Court to dismiss the application for abandonment/withdrawal but it has certainly the right to regulate its own proceeding on a judicious adjustment of its business."

7. Their Lordships distinguished the ruling reported in *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.*, and *Shaik Hussain and Sons Vs. M.G. Kannaiah and Another*,

8. In *R. Ramamurthi Iyer Vs. Raja V. Rajeswara Rao*, Supreme Court refused permission to withdraw the suit after the defendant had gained or acquired advantage or privilege of buying the shares of the plaintiff. In the case before us, there are stronger grounds to refuse permission to withdraw from the appeal in view of the fact that serious allegations of illegally deriving benefits from Court's order obtained by suppressis veri and in brazen violation of statutory provision of Section 223 of West Bengal Act are awaiting our consideration. Accordingly, permission to withdraw has been refused.

9. It appears from the record that on 11-6-1998 when the tenant/respondent and the appellant were called upon by the Chairman of the Municipality, the order of the Division Bench dated 1-6-1998 was already recalled on 10-6-1998 and the only order of the High Court which was subsisting was that of the single Judge passed on 29-9-1997 in W.P. No. 9969(W)/97 whereby the Municipality was directed not to take steps for demolition without due process of law. The other order that was operating was passed by the Civil Court restraining the landlord from evicting the suit premises till disposal of the temporary injunction. Both the orders were brought to the knowledge of the Chairman, Municipality by the tenant/ respondent. It was also asserted by the respondent in its petition for appropriate relief that on 11-6-1998, he informed the Chairman that petition for recall of the order of 1-6-1998 was pending in the High Court. The appellant in paragraph 10 of the memo of appeal deliberately suppressed the fact of interim order being passed by the Civil Court and made a false affidavit that no order of injunction was passed. This misrepresentation led the Division Bench pass the order dated 1-6-1998. Not only he made false representation before the Court he did not dissuade the Chairman, Municipality from holding a meeting and taking a decision of demolition, although the tenant-respondent informed the Chairman in his presence that prayer for recalling of the order was pending. The order of Division Bench was passed on 1-6-1998 and the Chairman called upon the respondent-tenant on 10-6-1998 to attend the meeting to be held on 11-6-1998 and the decision to demolish was taken on 14-6-1998. Section 223 of the West Bengal Municipal Act lays down as follows :--

"Power to order demolition of buildings, dangerous, ruinous or unfit for human habitation.-- Where the Board of Councillors, upon any information in its possession, is satisfied that any building is unfit for human habitation and is not capable, at a reasonable expense, of being rendered fit, it shall serve upon the owner of the building, whether as lessee, mortgagee or otherwise, a notice to

show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.

If any of the persons upon whom a notice has been served under Sub-section (1) appears, in pursuance thereof, before the Board of Councillors and gives an undertaking that such person shall, within a period specified by the Board of Councillors, execute such work of improvement in relation to the building as will, in the opinion of the Board of Councillors, render the building fit for human habitation or that the building shall not be used for human habitation until the Board of Councillors, on being satisfied that it has been rendered fit for human habitation, cancels the undertaking, the Board of Councillors shall not make an order of demolition of the building.

If no such undertaking as is referred to in Sub-section (2) is given or if, in a case where any such undertaking has been given, any work of improvement to which the undertaking relates is not carried out within the specified period or the building is used in contravention of the terms of the undertaking, the Board of Councillors shall forthwith make an order of demolition of the building requiring that the building shall be vacated within such period, not being less than sixty days from the date of the order, as may be specified in the order, and demolished within ninety days after the expiration of that period.

Where an order of demolition of a building under this section has been made, the owner of the building or any other person having an interest therein shall demolish the building within the period specified in the order, and if the building is not demolished within such period, the Board of Councillors shall demolish the building and sell the materials thereof.

Any expenses incurred by the Board of Councillors under Sub-section (4), which cannot be met out of the proceeds of sale of materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act."

10. In this case the Board of Councillors did not pass the resolution of demolition. The Chairman and the two Councillors of whom one was local had no authority to pass any resolution u/s 223 of the West Bengal Municipal Act. Moreover the requirements under the Act of sending notice u/s 223(1) of the Act both upon the owner and the tenant giving statutory time and obtaining an undertaking from the tenant/respondent or the owner were not complied with in utter violation of this section. The Chairman of Municipality having no authority or jurisdiction to pass the said order of demolition of the disputed premises carried out the order of demolition in hot haste the next day with the help of police. The Contai Municipality was made a party in writ petition but the Chairman did not care to verify the information of the tenant from the Court, nor had the patience to wait for the statutory period before executing their resolution, although they are the creatures of the statute.

11. The question is whether the appropriate relief prayed for by the tenant would

be in the form of restitution in the demolished premises or in the form of compensation. The learned counsel for the respondent cited ruling reported in *Prasanna Kumar Roy Karmakar Vs. State of West Bengal and others*, In that case a private dispute between a landlord and tenant was taken up in writ jurisdiction and mandatory orders were passed directing the State and police authorities to allow the writ petitioner (the landlord) to have ingress and egress to and from the disputed premises. On the basis of that order the landlord with the help of the police authorities evicted the tenant from his flat. In appeal, the appellate Court held the writ petition which had given rise to that appeal ought not to have been entertained. Their Lordships of the Apex Court observed, "this order did not enable the appellant to get back possession. The appellate Court lost sight of the fact that the writ Court had intervened in a purely private dispute and as a result of its order the appellant has been dispossessed by the police."

12. A further application therefore, was made to the appeal Court for necessary relief. On 14th January, 1994 the appeal Court passed the following order :--

"The appeal has already been disposed of and we have accordingly become functus officio. This application can therefore no longer be entertained and is rejected."

13. Their Lordships in the Supreme Court held,

"If the appellant was ejected from the disputed premises with police help pursuant to the order which was set aside, the possession should have been restored to him with police help, if necessary. Otherwise, even after succeeding the appeal, the appellant will remain without remedy and out of possession as a result of the order passed by the trial Court. *Actus curiae neminem gravabit* -- An act of the Court shall prejudice no man. It was the duty of the appeal Court to restore status quo ante to passing of the order on 30th August, 1993."

14. In *Sujit Pal Vs. Prabir Kumar Sun and Others*, the Division Bench held that the Court could grant temporary mandatory injunction u/s 151 by directing the police to restore the possession to the plaintiff, the injury being grave and serious, ends of justice demanding that Court should grant immediate relief. No technicality can prevent the Court from doing justice in exercise of its inherent power.

15. In AIR 1957 Trav Co 286, their Lordships in that case observed as follows :--

"In this case it was clear that the plaintiffs interference with the door passage and the smoke tiles in the roof, tended to discredit the temporary injunction order passed by the Court. If the plaintiff felt aggrieved that the order had not gone far enough he must have taken the matter in appeal at least by approaching the Court once again for redress. It was not for him to take the law into his own hands and change the scope of the earlier order in the case."

16. From the decisions discussed above it is evident that this Court can direct the tenant in the demolished premises be restituted by directing the appellant and

the Municipality to reconstruct the building if necessary and put the tenant-respondent in original possession. The appellant has stated that the entire building has been demolished and the respondent has become out of possession. Whereas the respondent has stated in his petition that the portion of the building has been partially demolished.

17. From the decisions discussed above it is clear that the Court is empowered to do complete justice by restituting the tenant in his original position by directing to reconstruct the building, if necessary. The appellant has stated that the building has been totally demolished and the respondent has been out of possession whereas the respondent claims that a portion of the building has been demolished. Without entering into this dispute we can only hold that the appellant who by practising fraud upon the Court and by intentionally and deliberately violating the Court's order is guilty of having evicted the respondent wrongfully from the tenanted premises by demolishing the same with the help of the Corporation. "A stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice, and his contempt is punishable by committal or attachment. The punishment is inflicted, not for technical infringement of the order, but for aiding and abetting others in setting the Court at defiance, and thus, while obedience to the order is enforceable merely by civil process, such conduct on the part of a stranger to the action is a contempt of a criminal nature. A special kind of contempt by a stranger to an action consists in indemnifying a person against the consequences of committing a contempt." (Oswalds contempt of Court, page 106).

18. In this case the Corporation who was impleaded both in the civil Court and the writ petition as a respondent brazenly violated the statutory provision of the Act as discussed above and actively aided and abetted the breach of prohibitory order passed by the Court.

19. We, therefore, direct the appellant and the Corporation to pay Rs. 1,00,000/- each to the respondent within two months from this date and respondent would be at liberty to start reconstruction of the premises and to take possession thereof after completion of such construction on payment of rent at the existing rate to the landlord commencing from the sixth month since the date of reconstruction being undertaken. Whether the said amount of Rs. 1,00,000/- to be paid by Corporation will be reimbursed from the Chairman and the two Councillors present at the meeting dated 11-6-98 is a matter exclusively for the Corporation to decide. The respondent/tenant is given liberty to report to the Court after expiry of two months if the amount of compensation is not received from the appellant and the Contai Municipality for taking such further steps as the Court deems fit and proper for violation of the Court's order.

20. The appeal is dismissed. Advocates' fee be assessed at 200 g.ms. The Id. Registrar, Appellate Side, is hereby directed to lodge a complaint before the Chief Metropolitan Magistrate, Calcutta against the appellant, Sri Priya Brata Maity in M.A.T. No. 2970 of 1997 u/s 182 of the I.P.C. On being satisfied after holding an

enquiry in terms of S. 340, Cr. P.C. that the appellant committed the offence by swearing false affidavit in M.A.T. No. 2970 of 1997 arising out of W.P. No. 9960(W)/97 before the Division Bench of this High Court.

Satyabrata Sinha, J.

21. Although I agree with the judgment proposed to be delivered by my learned brother but keeping in view the importance of the question involved, I intend to assign additional reasons in support thereof.

22. Admittedly a suit is pending between the parties. It is also admitted that in the said suit an order of injunction had been passed restraining the appellant herein from dispossessing the writ petitioner by force.

23. In *Sushil Kumar Jhunjunwala Vs. Shi S.M. Chowdhury and Another*, a Division Bench of this Court of which I was a member, took judicial notice of the fact that tenants are harassed by their landlords and contrivances are adopted to evict the tenants by taking recourse to the other processes in the following words :--

The Court can take Judicial notice of the fact that a premises which is very valuable for business purpose, tenants are ejected by the landlords and persons Interested fight inter se amongst themselves to obtain possession of such premises. The landlord or the contesting party take law in their own hands in ousting a lawful tenant. The Apex Court has also taken a similar view in *Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others*, , wherein it was held that if it is proved that a tenant was dispossessed without due process of law, the same must be held to be illegal. In *Hanumanthappa Vs. Muninarayanappa*, the Apex Court held that no injunction can be granted against a lawful owner of property."

24. The answer to the question as to what would constitute an eviction of a tenant by a landlord except in accordance with law will depend on the facts and circumstances of each case. In this case apparently a contrivance had been adopted to evict the petitioner by taking recourse to Section 223 of the West Bengal Municipal Act.

25. A power u/s 223 of the said Act can be exercised by the Board of Councillors. Sections 13 and 14 of the said Act are as under :--

The Municipality.-- (1) The Municipality established for a town shall mean the Board of Councillors charged with the authority of municipal Government of the town, and shall consist of-

(a) such number of elected members as there are wards within the municipal area, and

(b) persons having special knowledge or experience in municipal administration as may be nominated by the State Government from time to time, provided that such persons shall not have the right to vote In the meetings of the Municipality.

(2) The Municipality shall be a body corporate with perpetual succession and a common seal, and may, by the name of the Municipality of the town by reference to which the Municipality is known, sue and be sued.

(3) All executive actions of the Chairman-in-Council shall be expressed to be taken in the name of the Municipality.

(4) Subject to the provisions of this Act, the Municipality shall be entitled to acquire, hold and dispose of properties.

Constitution of Board of Councillors- (1) The Councillors elected in a general election of a Municipality shall constitute the Board of Councillors.

(2) The Board of Councillors unless dissolved earlier, shall hold office for a period of five years from the date appointed for its first meeting after the general election and no longer :

Provided that the Board of Councillors, unless dissolved earlier, shall continue in office till the next Board of Councillors assumes office.

(3) In a municipal area newly constituted, the local authority having jurisdiction over such area immediately before such area was constituted a municipal area, shall continue to have jurisdiction and to perform its functions till such time, not exceeding six months from date of the notification u/s 6 or Sub-section (3), or Sub-section (4), of Section 378, as the case may be, as may be necessary for holding elections.

(4) If, for any reason, it is not possible to hold the general election of a Municipality before the expiry of the period of five years specified in Sub-section (2), the Board of Councillors shall stand dissolved on the expiration of the said period and thereupon the provisions of Section 431 shall apply mutatis mutandis."

26. On the face of the order dated 11-6-98 it is clear that such a decision had not been taken by the Board of Councillors. A Councillor from an area in question was elected and another Councillor was called. The order dated 11-6-98 was, therefore, passed by an authority which lacked inherent jurisdiction.

27. In *Dukhi Shyam Benupani v. Parasmal Rampuria* reported in 1998 Cal Cri LR 236, a Special Bench of this Court noticed the decision of the Apex Court In *Pandurang and Others Vs. State of Maharashtra*, wherein it has been held that even a right decision by a wrong forum would be a nullity in the following terms :--

"What can be done only by at least two Judges cannot be done by one Judge. Even if the decision is right on merits, It is by a form which is lacking in competence with regard to the subject-matter. Even a right decision by a "wrong forum" is no decision. It is non-existent in the eye of law. And hence a nullity."

28. In *Dukhishyam Benupani* (1998 Cal Cri LR 236) (supra) it was held that a learned single Judge could not have taken a view contrary to that of the Division

Bench.

29. Even the authorities of the Municipality did not proceed on the basis of the materials on records. The Inspection Report clearly showed that only a portion of the building requires to be demolished, but by reason of order dated 11-6-98 the entire house was directed to be demolished. Section 223 of the said Act clearly stipulates that a person who appears before the Board of Councillors, obtaining a notice may give an undertaking that within the period specified by the Board of Councillors he would execute such work of Improvement in relation to the building as will, in the opinion of the Board of Councillors, render the building fit for human habitation or that the building shall not be used for human habitation until the Board of Councillors, on being satisfied that it has been rendered fit for human habitation, cancels the undertaking, the Board of Councillors shall not make an order of demolition of the building. The said provision is mandatory in nature.

30. An order of demolition can be passed only in the event such an undertaking is not given or even if given, falls within the third paragraph of the said provision. Furthermore, whenever an order of demolition is to be passed, the owner of the building must be ordered to demolish the same within the time specified therefore and only in the event, the building is not demolished within such period, the Board of Councillor shall demolish the building and sell the materials thereof for the purpose of recovery of the expenses. In this case all the mandatory requirements have been thrown to the winds.

31. There cannot, however, be any doubt that a distinction between an error in absence of jurisdiction, and an error within Jurisdiction is very fine. What is error within jurisdiction has been stated by Lord Wilberforce in *Anisminic Ltd. v. Foreign Compensation Commission* reported in (1969) 1 All ER 208 at page 244 in the following terms :--

"The Courts, when they decided that a "decision" is a "nullity", are not disregarding the preclusive clause. For just as it is their duty to attribute autonomy of decision of action to the tribunal within the designated area, so as the counterpart of this autonomy, they must ensure that the limits of that area which have been laid down are observed (see the formulation of Lord Sumner in *R. v. Nat Bell Liquors Ltd.* (1922) 2 AC 128). In each task they are carrying out the intention of the legislature, and it would be misdescription to state It in terms of a struggle between the Courts and the executive. What would be the purpose of defining by statute the limit of a tribunals" powers, if by means of a clause inserted in the instrument of definition, those limits could safely be passed? After the admirable analysis of the authorities made by Browne, J., in his judgment (available in the record in this House), no elaborate discussion of authority is needed in order to support this view of the courts" powers. I extract some well-known pronouncements which have stood the test of time. One may find difficulty in some of the cases in following the reasoning by which the conclusion has been reached that a particular area of decision was or was not

remitted to the tribunal concerned. Some of these are complicated by the procedural refinements of the prerogative writs; in others perhaps the apparent merits or demerits of the decision may have led the Courts into strained distinctions between facts which the tribunal might legitimately find and others (called "jurisdictional") which it might not. But the principle is now becoming reasonably clear."

32. The said order dated 11-6-1998, therefore, had been rendered without any application of mind to the report submitted in that regard or to the provisions of the statute and other attending circumstances. The writ petitioner-respondent admittedly filed an application for adjournment before the Municipal Authorities on the ground that an application has been filed for recalling of the order dated 1-6-98 passed by a Division Bench. No order had been passed on that application.

33. What was the necessity for passing the said resolution without considering the application for adjournment? No cogent reason appears to exist and in any event, no reason has been assigned. The very fact that the Board of Councillor had acted in a hot haste manner clearly goes to show that their action is mala fide.

34. In *Dr. S.P. Kapoor v. State of Himachal Pradesh* reported in AIR 1981 SC 2181, the Apex Court has held that any order passed in hot haste would amount to malice.

35. The said order must be held to have been passed for unauthorised purpose and, thus, would amount to malice in law as has been held by the Apex Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, .

36. A finding as to whether an order suffers from malice a fact can be ascertained not only from the conduct of the parties but also from the attending circumstances.

37. In *Akhileshwar Mishra Vs. State of Bihar and Others* , a Division Bench of the Patna High Court referred to a decision in *Bal Kalyani and others Vs. State of Maharashtra and others*, and held :--

"Against the plea of mala fides has been made in a pointed manner. The heavy burden in establishing mala fides is certainly to be reckoned by Courts in that connection. Helpful guides are available from leading judgments of the Apex Court. We do bear in mind that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. Care is therefore taken, as cautioned by Supreme Court, that dubious inferences are not drawn from incomplete facts (see *E.P. Royappa Vs. State of Tamil Nadu and Another*, We also note that the charge of mala fides is more easily made than proved (see *Kedar Nath Bahl Vs. The State of Punjab and Others*, . It is to be ensured that the plea of mala fides is not made "the last refuge of a losing litigant" as indicated in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, .

37A. While evaluating a plea of mala fide," quite often, the Government files would give helpful clues, about objective facts. A party, totally strange to the notings in the file and the processing of the papers, would not be in a position effectively to mention with provision the events which twisted a given trend of opinion. The files, therefore, would throw such light when the Court is confronted with allegations of one party and denial of the other. The Supreme Court has indicated that while moving along the track of Government's decision making process, the Court should not be unduly swayed either by a feature like excessive speed or a flash pointed expeditious action. The following observations of Chandrachud, J. speaking for the Supreme Court in K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, are appropriate :

"The reasonableness of a decision, in any jurisdiction, does not depend upon the time which it takes. A delayed decision of the executive can also be had as offending against the provisions of the Constitution and it can be no defence to the charge of unconstitutionality that the decision was taken after the lapse of a long time. Conversely decisions which are taken promptly, cannot be assumed to be bad because they are taken promptly. Every decision has to be examined on its own merits in order to determine whether it is arbitrary or unreasonable."

"While evaluating a plea of mala fides, Court has to bear in mind that all the allegations are to be taken together and an inference to be drawn (see observations in Hem Lall Bhandari Vs. State of Sikkim and Others, , Deepak Sibal Vs. Punjab University and Another, and Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, We would consider all the allegations together, we will see whether the allegations are established we will further consider the question whether, if such allegations are established, they are sufficient grounds to prove that malice has vitiated the impugned order. The speed with which some of the proceedings have been conducted, are referred to as indicative of the existence of adventitious propellants giving the drive and momentum to an otherwise slow operating machinery of the State."

38. In this situation and particularly in view of the fact that the order dated 1-6-98 stood recalled clearly leads to the conclusion that the writ petitioner is entitled to the restitution of the property. It is now well settled that an order of restitution can also be passed in exercise of the inherent jurisdiction of this Court.

39. In Halsbury's laws of England, 4th Edn., 434 states :

"Common Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in English Law are genetically different from remedies in, contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

40. It is now well settled that the doctrine of "restitution" is not confined to

Section 144 of the Code of Civil Procedure. The Court can grant such restitution even in exercise of its power u/s 151 thereof.

41. In Jacob Syriac Nidhiri v. Ngendra Prabhu Krishna Prabhu. AIR 1951 Trav Co 226 (i) a Division Bench consisting of Govinda Pilial and Gangadhara Menon, it was held :--

"It is not necessary for the application of this section that possession of property should have been obtained in execution of the decree which was subsequently reversed. The section would apply even if possession of the property was taken otherwise than by execution provided it was obtained under cover of or in consequence of the decree."

42. In Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd., , the Apex Court has held that law of restitution encompasses within its fold all claims founded upon the principle of unjust enrichment.

43. In my opinion, the writ petitioner in the facts and circumstances of the case is entitled to restitution. There cannot be any doubt whatsoever that in this situation the writ petitioner would also be entitled to an order of mandatory injunction.

44. In Sushil Kumar Jhunjhunwala Vs. Shi S.M. Chowdhury and Another, it has been held :--

"There cannot be any doubt whatsoever that a Court in exercise of its power conferred upon it under Order 39, Rules 1 and 2 read with Section 151 of the CPC can pass an order of mandatory injunction. A Division Bench decision of this Court in Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others, , has been considered by several other Division Benches including one in Indian Cable Company Limited Vs. Smt. Sumitra Chakraborty, ; Anil Kumar Sen, J. (as his Lordship then was) upon taking into consideration various decisions of different High Courts of this country as also the decision of Courts in England, clearly held that the Court had power to grant injunction in mandatory form in the following terms :--

"Review of those decisions, therefore, leads to the conclusion that there is no bar to the Courts granting interlocutory relief in mandatory form though in exercising the Court's discretion In this regard the Court should act with greatest circumspection. Such a relief can be granted only in rare and exceptional cases and what that rare and exceptional case is must be left to the Court to adjudge in the facts and circumstances of each case. I, therefore, now proceed to consider whether the plaintiff in the present case has made out any such exceptional case."

45. In Joynarain v. Brojendra Nath reported in AIR 1951 Pat 546, a Division Bench of the Patna High Court has granted injunction to demolish the structures which was raised taking advantage of dismissal of the order of injunction without granting to the appellant an opportunity to exercise his right of appeal.

46. There cannot thus be any doubt whatsoever that in appropriate cases, the Court has power to grant mandatory injunction in exercise of its inherent power both in favour of the plaintiff and the defendant.

47. In *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, the Apex Court clearly held that the Court has power to grant injunction in exercise of its inherent jurisdiction. Such a power had also been exercised in a similar situation by a learned single Judge of the Patna High Court in *Smt. Indrawati Devi Vs. Bulu Ghosh and Others*, . In that case also the tenant was dispossessed by force during pendency of the suit and then a prayer was made to withdraw the suit. Such a prayer was refused by the learned trial Judge. In revision the High Court held :

"It is, therefore, not disputed before me that the situation which arose in the instant case was not one which was covered by the situations envisaged in Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The Court was faced with a peculiar situation where taking advantage of the Courts remaining closed during Puja Vacation, the petitioner through her husband, a retired D.S.P. and other relatives and musclemen forcibly evicted the concerned opposite parties who were tenants in the suit premises, even while the suit was pending before a Court of competent jurisdiction. The game was to create a situation in which the tenants were faced with *fait accompli*. This was sought to be achieved by complete disregard of all norms legal or moral. Having achieved the objective, the petitioner wanted the Court to grant her permission to withdraw the suit. By making such an application and asking for the Court's permission the petitioner was doing nothing short of scoffing at the legal procedures and informing the Court how helpless it was when it dealt with shrewd and cunning litigants who wielded considerable influence and muscle power. In such a situation, was the Court expected to remain a mere idle spectator even when it found that a party to the suit had acted in a grossly illegal and high-handed manner in relation to the subject-matter of the suit pending before it? The answer must be in a firm negative. If the dignity and prestige of the Court are the majesty or the rule of law is to be upheld, the Court must stretch its long arms to deal with any litigant who attempts to play with the procedures of the Court and shows scant regard for the rule of law. The inherent powers of the Court are meant to be exercised in such situations because nothing is more demoralising to a law abiding citizen than to be told by the Court that it is helpless in the matter of affording him any protection even when his adversary has acted with impunity contrary to all known legal procedures and that too after submitting to the Court's jurisdiction. To tolerate such an injustice would itself amount to perpetrating injustice in its most blatant form."

48. We agree with the aforementioned observations.

49. The case at hand also gives rise to another peculiar situation. It is evident that the order dated 1-6-98 was obtained by making misrepresentation before the Court.

50. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, and *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, the Supreme Court has gone to the extent of saying that suppression of a document constitutes fraud on Court. Reference in this connection may also be made to *Kumari Rashmi v. D.M.C.H.*, reported in 1993 BBCJ 612, *Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others*, and *State of Tamil Nadu and others Vs. A. Gurusamy*, In such a case even principles of natural justice are not required to be complied with as has been held in *Damodar Ramnath Alve v. Gokuldas Ramnath Alve* reported in 1997 (3) ICC 154 in the following terms :--

"In reply to the submissions made by Mr. Usgaonkar, the learned Senior Counsel, Mr. Mulgaonkar, the learned Counsel for the respondents 1, 3 and 4, on the first proposition regarding the Trial Court's powers to review its order if fraud is committed or the Court is misled, the Court which passes the order is competent to review its order. Reliance can be placed on the case of *Dadu Dayal Mahasabha Vs. Sukhdev Arya and Another*, . According to the Civil Procedure Code, the Court has inherent power u/s 151 and in exercise of that power, can vacate its own order obtained by fraud or misrepresentation.

In the case of *Basangowda Patil v. Churchigirigowda Yogangowda* ILR (1910) Bom 408 : ILR 1912 Bom 223 their Lordships observed that:

"It is the inherent power of every Court to correct its own proceedings when it has been misled."

Similar was the view of the Calcutta High Court in several decisions mentioned in *Sadho Saran Rai and Others Vs. Anant Rai and Others*,

I find considerable force in the submission made by Mr. Mulgaonkar, the learned counsel for the respondents and thereby, according to him, the learned trial Judge has not committed any illegality while exercising his power to correct his original proceedings."

51. Mr. Roy, appearing on behalf of the appellant submitted that the petitioner having obtained the order passed by the learned trial Judge was bound by the same pursuant also a decision as to be taken in terms of Section 223 of the West Bengal Municipal Act and in that view of the matter the order dated 11-6-1999 should not be interfered with. The said submission of Mr. Roy cannot be accepted for more than one reasons :

(a) Firstly, no action had been taken pursuant to the order of the learned trial Judge;

(b) As noticed hereinbefore, the order had not been passed by the competent authority;

(c) The said order is a nullity having been rendered without any application of mind to the relevant factors viz. the order of injunction passed by the learned

civil Court and the other mandatory provisions contained in Section 223 of the Municipal Act;

(d) Even in a case where an order had been passed in violation of the order of injunction, the Court can bring the parties to the same position in exercise of its inherent jurisdiction as if the order of injunction had not been violated.

See the State of Bihar v. Usha Devi, reported in AIR 1956 Pat 55 , Magna and Another Vs. Rustam and Another, Century Flour Mills Ltd. Vs. S. Suppiah and Others, .

(e) The statutory authority must exercise its jurisdiction within four corners of the statute. See Jolly Begum and Others Vs. State of West Bengal and Others, which has been violated in this case.

(f) The Court can take notice of subsequent events and mould reliefs with a view to shorter litigation.

(g) The right to a shutter being protected under Article 21 of the Constitution of India, a person illegally deprived of therefrom is entitled to be compensated in view of the doctrine of "constitutional tort.

(h) The action on the part of the Municipal Authorities suffers from the views of both malice of fact and malice in law.

(i) In this case the collusion between the Appellant and the Municipal Authorities is apparent on the face of the record.