

(1965) 11 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 18 of 1964

Shivkunwarbai

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 25-11-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 366(10), 372

Madhya Pradesh Government Premises (Eviction) Act, 1952 — Section 3, 6

Citation : AIR 1967 MP 6

Hon'ble Judges : V.R. Newaskar, J;P.K. Tare, J;H.R. Krishnan, J

Bench : Full Bench

Advocate : P.L. Mehta, for the Appellant; S.L. Dubey, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Newaskar, J.—On difference between Tare and Krishnan JJ., and agreeing with Tare JJ. On a difference of opinion between the judges constituting the Division Bench these two Miscellaneous Petitions Nos. 18 and 19 of 1964 have been placed before me as a third Judge.

2. The petitioners Shivkunwarbai and Bapu Vishwanathsingh referable to these two petitions seek to challenge the orders, dated 28-1-1964 passed by the Sub-Divisional Officer Jhabua, in his capacity as the competent authority u/s 6 of the Madhya Pradesh Government Premises (Eviction) Act, 1952 (XVI of 1952), which was confirmed in appeal No. 11 of 1963-64 by the Collector Jhabua, as being without jurisdiction.

3. Material facts are as below:

4. The petitioner Shivkunwarbai is the widow of Bapu Gordhansingh, who was the son of Paswinji Navaratanbai, a mistress of Maharaja Udaisingh of Jhabua. There was another mistress known as Paswanji Bhagirathibai of Maharaja Udaisingh. Petitioner Bapu Ramsinghji was born of her. It is said that both Bapu

Gordhansinghji and Bapu Ramsinghji were the sons of Maharaja Udaisingh through the mistresses named above. Petitioner Vishwapathsingh is the son of Bapu Ramsinghji. Maharaja Udaisinghji during his life time had conferred a Jagir grant of Mauja Dholyavadh to Paswanji Navaratanbai. Similar Jagir grant was made to Paswanji Bhagirathibai. This was known as Semlta Jagir. Besides the Jagir grants Navaratanbai was in occupation of two houses. Petitioner Shivkunwarbai claimed that these two houses had been constructed by Navaratanbai out of her own money and were not the property of the erstwhile State of Jhabua. The petitioner Vishwanathsingh also is in occupation of another house situated on the college road Jhabua. According to him this house had been constructed by his father Bapu Ramsinghji in the year 1930-31 by his own money and was not the property of Jhabua State.

5. Maharaja Udaisingh died and was succeeded by Maharaja Dilipsingh, who by his order dated 23-9-1943 resumed the Jagir grants made by the Late Highness and instead granted a monthly cash allowance of Rs. 100/-. They however continued to occupy the respective houses which were in their possession. This State of affairs continued till 30th of March 1948 i.e., a few months before the integration of Princely States of Central India into a single State known as Madhya Bharat. On that date His Highness Dilipsinghji passed the following order:

"It is hereby further declared that the immovable properly mentioned in the enclosed list are the private property of the Ruler and the Ruling Family.

All the villages comprised in the Jagirs as-Signed to Magi Sehta Gowaiji (Ambu Jagir). Her Highness Chowhanji (Khardu Jagir), and Maharaj Kumar Devendra Kumar Singh (Najalu Bhagor Jagir), shall always be considered as khasgi Jagirs and on their falling vacant they shall be for ever at the disposal of His Highness."

In the list that was enclosed with this order items Nos. 6(e) and (f) were mentioned as, (e) AH houses which are occupied by Bapu Ramsingh, (f) All houses which are in the occupancy of Navaratanbai.

6. Thus the order mentioned these houses as included in the list of the private property of the Ruler and the Ruling Family. This was followed by another order on the following day in the form of letter addressed to Paswanji Navaratanbai and also to Bapu Ramsingh It referred to the earlier order of resumption of their respective Jagirs and grant of cash allowance of Rs. 100 per month by Darhar Parwana Nos. 173.1 and 173.8 dated 23-9-1943 and informed them that since a new administrative set up was in the offing with regard to the Princely States in Malwa and there was likelihood of the percentage of Civil list (Privy purse) being curtailed they would thence forward receive the amount of their respective allowances from State Treasury every month.

7. The order further mentioned in the case of Navaratanbai as below :

" You will continue to reside in the big houses of " Khasgi (Private property of the Ruler) in which you are now residing After you they will be taken possession by

Wasur (His Highness) You will have no right to sell mortgage or create any kind of charge on them only dated 1-4-1948."

Similar order was passed in the case of Bapu Ramsingh with this modification that in his case the order referred to one house instead of two. On 29-6-1948 the State of Jhabua merged into Madhya Bharat. The private properties of the Rulers were settled by the Government of India in the Ministry of States before 25th July 1949. On the last mentioned date a Memorandum No. 1912/128/48 Indore dated 25th July 1948 was issued under the signature of the Deputy Secretary to Government of Madhya Bharat to the Secretary P. W. D. Superintending Engineers etc., Commissioners, Collectors, and other departmental heads and authorities. Paragraphs 1 and 2 of the Memorandum are as below:

1 " The Government of India in the Ministry of States have now settled private properties of Rulers of integrating States in Madhya Bharat. A printed copy of the list is enclosed. Each Department concerned has now to take action first for handing over of the property to the Ruler concerned unless it is already in his possession, and secondly to divest Government of all responsibility for its maintenance and for expenditure on it.

2. Before the formation of Madhya Bharat, there was not especially in some of the smaller States, a clear distinction between the Ruler's and State property. Each department has also to see, therefore, that no property out of property belonging to the Ruler and/or the State before the formation of Madhya Bharat is left with the Ruler excepting the property in the enclosed list. "

The enclosed list did not include the houses of either of the two petitioners.

8. The Collectors Jhabua started proceedings with reference to the houses in the possession of Navaratanbai and Bapu Ramsinghji in the year 1950, They resisted contending that the said houses were not the private property of the ex-ruler of Jhabua but were the private property of the respective occupants and the Madhya Bharat had no right to deprive them of their possession. These proceedings were later dropped. Once again the Collector Jhabua issued letters one to each of the two petitioners dated 17-3-1960 and 23-3-1960 calling upon them to hand over possession of the houses in their possession. Shivkunwarbai claimed the two houses as the widow of Bapu Gordhonsinghji son of Navaratanbai on the ground that they were the personal property of Navaratanbai and had devolved on her death upon her husband and on her husband's death upon her whereas Bapu Vishwanathsingh claimed the house in his possession as being the personal property of his father Ramsingh which devolved upon him as his son. Each claimed to be in uninterrupted possession of the respective houses in their charge since the time of their construction. The proceedings consequent upon those letters were dropped once more.

9. On 16-1-1961 proceedings were once again instituted against Shivkunwarbai and Bapu Vishwanathsingh this time u/s 3 of the Madhya Pradesh Government Premises (Eviction) Act in the Court of Sub-Divisional Officer, Jhabua. The

petitioners again contested the proceedings They were later withdrawn due to formal defects.

10. On 30-4-1962 the Executive Engineer, District Dhar submitted applications u/s 3 read with Section 4 of the Madhya Pradesh Government Premises (Eviction) Act against either of the two petitioners before the Sub-Divisional Officer Jhabua, who was constituted competent authority under the said Act. By these petitions possession was claimed on behalf of the State on the ground that the said house were Government Premises and the petitioners could be required to vacate the same under the orders of the said competent authority on the ground that they were in occupation without having any right to do so.

11. The petitioner resisted contending as before that the houses in their possession belonged to them and did not belong to the State of Madhya Bharat or the State of Madhya Pradesh.

12. The Sub-Divisional Officer by his order dated 28-1-1964 overruled the contentions of the petitioners and ordered them to vacate. The petitioners preferred appeals to the Collector Jhabua in his capacity as the appellate authority under the Act. These appeals were dismissed by him by his order dated 7-4-1964.

13. The present petitions Nos. 18 and 19 of 1984 are thereupon filed in this Court. The principal grounds on which the petitions are based are :

1. That on true construction of the Madhya Pradesh Government Premises (Eviction) Act, 1952, the Act is applicable to such premises as are admittedly Government premises and not to those with reference to which there is dispute.

2. That if the Act, on its true construction empowers the competent authority to pass orders with reference to immovable property as to which bona fide dispute as to title and right to possess exists, it would be void and unconstitutional as it would trench upon the constitutional guarantee under Articles 14 and 19 of the Constitution of India.

3. That assuming that the competent authority and the appellate authority had jurisdiction to determine the disputed ownership as in between the State and the private individual as special tribunals created under the Act they had exercised the power against the principles of natural justice.

These petitions were opposed by the State of Madhya Pradesh the Executive Engineer District Dhar, Sub-Divisional Officer. Jhabua and Collector, Jhabua.

14. In the return submitted on behalf of the State it was denied that the houses in question had been constructed by Navaratanbai and Bapu Ramsingh as alleged in the two petitions. They asserted that the houses belonged to the Ruler and both Navaratanbai and Bapu Ramsingh were allowed to reside and enjoy the usufruct of the houses in their possession for their life by the order of the Ruler dated 1-4-1948. The order defined the rights which they had in those houses.

That order being of the Ruler was not and could not have been assailed by either of them.

15. Replying to the grounds of attack it was asserted that the premises in question property fall within the ambit of Government Premises (Eviction) Act, 1952, and consequently both the Sub-Divisional Officer the Collector as the appellate authority had Jurisdiction to pass orders u/s ft of the Act in spite of any dispute aa to title being raised by the petitioners.

16. The power conferred upon the competent authority bo direct eviction of a person in possession of the Government premises is not violative of Article 14 or 19(f) of the Constitution. It was also asserted that the orders of the Ruler dated 30-3-1948 and 1-4-1948 were laws and are binding upon the petitioners as much as upon the successor State. Since the order dated 1-4-1948 gave only limited right to Navaratanbai and Bapu Ramsingh of residence and enjoyment of houses in question for life, the properly reverted to the State on their death and the petitioners were no better than trespassers.

17. On the basis of these respective contentions Tare J. held that the orders of the Ruler dated 30-3-1948 and 1-4-1948 are not law. They are executive orders and whether they had become fait accompli or otherwise the successor State had no title to the disputed premises. The premises were therefore not Government premises and neither the competent authority nor the appellate authority had power u/s 3 of the Act to require the petitioners to vacate.

18. Krishnan J. on the other hand held that the decision of the Ruler embodied in the orders dated 30-3-1948 and 1-4-1948 had become fait accompli. Before the orders Navaratanbai and Bapu Ramsingh lived in the houses on the basis of their inchoate title, but after the orders they stayed by reason of permission granted by the Ruler to stay there during their life lime. The learned Judge further held :

" The Ruler having acquired the reversion to these houses, that property went into the common pool winch was divided by the Government into the properties of the new State on the one hand and the properties of the Ruler on the other. "

According to him the title of the State Government was clear and consequently the competent authority had rightly required the petitioners to vacate the houses in exercise of his power u/s 3 of the Act.

19. In order to consider and determine these petitions in view of the respective contentions of the parties as indicated above. I would formulate the following points :

1. Whether the orders dated 30-3-1948 and 1-4-1948 of the Maharaja of Jhabua constitute laws which can well be held to have been continued, as existing law within the meaning of Article 366(10) of the Constitution of India, by Article 372 of the Constitution, or are merely executive or administrative orders of the Ruler.

2. If the said orders are executive or administrative in nature whether the same

had been fully carried out involving total deprivation of title of Navaratanbai and Bapu Ramsingh in the houses in their possession and subsequent conferral of life interest upon them ?

3. Whether the competent authority under the Madhya Pradesh Government Premises (Eviction) Act, 1957, had sufficient power and jurisdiction to determine the question as to the premises referable to three proceedings being Government premises or the premises of the petitioner ?

4. Is this question a jurisdictional fact? If so is the question rightly decided ?

5. Is the competent authority as a tribunal under the Madhya Pradesh Government Premises (Eviction) Act, 1952, empowered to determine the disputed question as to the title of the State in respect of the premises ?

6. Assuming that the competent authority was so empowered, was it open for it to determine the dispute as to title merely on the basis of the orders of the Ruler dated 30-8-1948 and 1-4-1940 without taking into account all the materials bearing on the question of the title of Navaratanbai and Bapu Ramsingh to the houses in question which the parties might desire to place ?

7. Can this Court in exercise of its power under Articles 226 and 227 of the Constitution, examine the legality of these orders on the ground that the competent authority under the Madhya Pradesh Government Premises (Eviction) Act, 1952 and the Appellate Authority constituted thereunder had failed to act within the bounds of their authority ? Point No. 1. : Before dealing with this point on merits it will be useful to indicate the distinction made in decided cases between orders which are legislative in nature and those which are executive.

20. In *Umaid Mills Ltd. v. Union of India* AIR 1968 SC 953 their Lordships of the Supreme Court after referring to their earlier decisions in *Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others*, and also to *Promod Chandra Deb and Others Vs. The State of Orissa and Others*, observed in para 13 page 958 of the report as under :

" In our view, none of the aforesaid decisions go the extent of laying down that any and every order of a Sovereign Ruler who combines in himself all functions must be treated as law irrespective of the nature of character of the order passed. We think that the true nature of the order must be taken into consideration, and the order to be law must have the characteristics of law, that is of a binding rule of conduct as the expression of the will of the sovereign which does not derive its authority from mere consensus of mind of two parties entering into a bargain. It is not necessary for this purpose to go into theories of legal philosophy or to define law. However, law may be defined, be it the command of the supreme legislature as some jurists have put it or be it a body of rules laid down for the determination of legal rights and duties which Courts recognise."

There their Lordships were concerned with an agreement of the Ruler of Jodhpur

State and the point pressed was that the agreement being the command of the sovereign was itself in law. Their Lordships rejected that contention in the context in which the agreement was made. The same view was reiterated in a later decision of the Supreme Court reported in AIR 1954 SC 888. *Bengal Nagpur Cotton Mills Ltd. v. Board of Revenue Madhya Pradesh*.

21. In AIR 1084 SC 1043 *Mate of Gujarat v. Vora Fiddali*, the Supreme Court was concerned with the question whether the resolution of Tharao dated 12-9-1948 passed by the Maharaja of Sent State which merged in the State of Bombay, granting forest rights to holders of certain specified tenures was legislative in character and was law or was merely an executive order which it was competent for the succeeding State not to recognise by its executive order. It was held by the majority that it was not law but was a grant and consequently it was competent for the Government of Bombay to refuse to recognise the right by its executive order. These decisions were followed in *Govindrao Balwantrao Mahadik Vs. Krishnarao Daulatrao Mahadik and Another*, . The question for consideration in that case was regarding an order passed by the Ex-Ruler of Gwalior State in the following terms :

" Gujarish approved. This house really belongs to Major Sardar M. B. Mahadik and Sardar Angre issued the letter referred to above in contravention of my orders dated 26-10-42. It is, therefore, hereby ordered that the house in question should be handed over to Major Sardar K.D. Mahadik, in whom the ownership is vested. "

This order was held not to be law but merely an executive order declaring that the ownership of the disputed house vested in the respondent. With reference to such order the Division Bench took the view as below :

" If an order made during the regime of sovereign exercising absolute powers is enforced and fully given effect to, it would obviously be unnecessary to examine its true character. But what was sought in the present suit was the enforcement by the Municipal Courts of the successor State of the order passed by the quondam Ruler of Gwalior. The position does not now admit of any doubt such an order can be enforced in the Municipal Court of the successor State only if the order is a law as distinguished from administrative or executive orders. "

In *Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another*, , it was observed by the Gajendragadkar, C. J., who delivered the leading judgment :

" We do not think that the basic assumption made by Mr. Setalvad in presenting this argument is sound. It would be noticed that the basic assumption on which the argument is based is that in the case of an absolute monarch, there can be no distinction between executive and legislative orders. In other words, it is assumed that all orders which are passed by an absolute monarch (are) binding, and it is idle to enquire whether they are executive or legislative in character, because no such distinction can be made in regard to orders issued by an absolute monarch. It is true that the legislative, executive and judicial powers

are all vested in an absolute monarch, he is the source or fountain of all these powers and any order made by him would be binding within the territory under his Rule without examining the question as to whether it is legislative, executive or judicial; but though all the three powers are vested in the same individual, feat does not obliterate the difference to the character of those powers. The jurisprudential distinction between legislative and the executive powers still remains, though for practical purposes, an examination about the character of these orders may serve no useful purpose. It is not as if where absolute monarchs have away in their kingdoms, the basic principles of jurisprudence which distinguish between the three categories of powers are inapplicable. A careful examination Of the orders passed by aa absolute monarch would disclose to a jurist whether the power exercised in a given case by issuing a given order is judicial, legislative, or executive, and the conclusion reached on jurisprudential grounds about the nature of the order and file source of power on which it is based would nevertheless be true and correct. That, indeed, is the approach which must be adopted in considering the question as to whether the grant in the present ease is law within the meaning of Article 372 as well as Clause 4 (b) of Order 31 of 1048; and so, prima facie, it does not seem sound to suggest that in the case of an absolute monarch, that branch of jurisprudence which makes a distinction between three hinds of power is entirely inapplicable.

IN dealing with this aspect of the matter it is hardly necessary to examine and decide what distinguishes a law from an executive order. A theoretical or academic discussion of this problem would not be necessary for our present purpose, because all that we are considering at this stage is whether or not it would be possible to consider by reference to the character of the order, its provisions, its context and its general setting whether it is a legislative order or an executive order. Though theorists may not find it easy to define a law as distinguished from executive orders, the main features and characteristics of law are well recognised. Stated broadly, a few generally is a body of rules which have been laid down for determining legal rights and legal obligation which are recognised by Courts. In that sense, a law can be distinguished from a grant, because in the case of a grant, the granter and the grantee both agree about the making and the acceptance of the grant; not so in the case of law. "

The learned C. J., after reviewing several decisions of the Supreme Court, some of which are referred to above, concluded:

" The true legal position is that whenever a dispute arises as to whether an order passed by an absolute monarch represents a legislative act and continues to remain operative by virtue of Clause 4 (b) of the order, all relevant factors must be considered before the question is answered; the nature of the order, the scope and effect of its provision, its general setting and contest, the method adopted by the Ruler in promulgating legislative as distinguished from executive orders, these and other allied matters will have to be examined before the character of the order is judicially determined."

Bearing these principles in mind, I shall now proceed to examine the orders of the Maharaja of Jhabua dated 80-3-1948 and 1-4-1948.

22. The first of these orders, was published in the Gazette dated 90-3-1948. It purports to declare that the immovable property in the list enclosed and published along with that declaratory order was the private property of the Ruler of Jhabua. This publication did not purport to make any law nor did it purport to decide judicially the dispute as to whether the houses in the occupation of Navaratanbai and Bapu Ramsingh were the private property of the Ruler himself or is the property of those persons. The exact purpose for making this declaration appears to be that the question as to integration of the Princely States in the Central India was under consideration between the Government of India and Princely States. In that connection the question as to what should be left to the Ruler of a Princely State as his private property was also being considered. The Ruler of Jhabua, with a view to provide some basis for the settlement of the private property, made the aforesaid declaration. It was in the nature of a claim made by the Ruler that the properties in the list were his private properties. The list was later gone into by the Government of India and the properties of the petitioners were omitted from that list. Thus in the ultimate settlement these properties did not belong to the Maharaja.

23. The order dated 30-3-1948 then cannot be "Law" because had that been so in the ultimate settlement the properties would have become the property of the Ruler Maharaja Dilipsinghji since the law of the erstwhile State which integrated to Madhya Bharat become the laws of the new State unless modified, altered or repealed by the Act of the State legislature and later when the Constitution came into force. The laws of the preexisting States become the existing laws under Article 366(10) of the Constitution and would have continued under Article 372 of the Constitution as laws. Such a position is moreover destructive of the stand of the State of Madhya Pradesh that the said properties "become the properties of the succeeding State and did not continue as the private properties of the Ruler of Jhabua. The order dated 30-3-1948 of the Ruler is, therefore, not "law". It is also not a judicial determination of the dispute as to title between the Ruler and the petitioner. This order is, therefore, nothing better than an executive order of a declaratory character.

24. The second order dated 1-4-1948 was in the nature of communication addressed to each of the petitioner Navaratanbad and Ramsingh informing them that the cash allowances which they were being paid out of the civil list (Ruler's personal expenses) would thereafter be paid to them from the State Treasury. The reason for this change was stated to be that the percentage of civil list was 26 but in the coming arrangement regarding integration of the States in Malwa this percentage was likely to be reduced and it would be difficult to pay the cash allowances from his civil list. Then followed the statement that the petitioners were in occupation of the houses belonging to "khasgi" (private or personal property of the Ruler as opposed to that of the State). They could continue to

live in them till their life whereafter they would be taken possession of by the Ruler.

25. The underlying idea is that houses being the private and personal property of the Ruler would revert to his possession.

26. This statement involving assertion of fact cannot be read as "law". For if it were law then on integration it had to be respected, by the State of Madhya Bharat by the Regulation of Government Act No. 1 of 1948 and there would have remained no scope for the Government of India to intervene and settle the private property of the Rulers so as exclude these houses from the list of the private properties of the Rulers. The law in the absence of any legislation by the State of Madhya Bharat before the Constitution would have continued as "law" under Article 372 of the Constitution of India as the existing law as defined in Article 366(10) of the Constitution of India. In that case there would remain no scope for the State to claim the houses as the "Government premises" within the meaning of the term as defined in Section 2(b) of the Madhya Pradesh Government Premises (Eviction) Act, 1952.

27. It is thus clear that, the communication of the Ruler addressed to the predecessors of both the petitioners dated 1-4-1948 is not law. It cannot be called judicial determination of the absolute title of the Ruler and the extent of the interest which the petitioners were entitled to hold. In fact I would not call these communications as orders. They only purport to inform the petitioner as to their incompetence to dispose of the houses by transferring or creating encumbrances on them as at the end of the life of each one of them the Ruler would reoccupy them. Even if they are taken to be executive orders, they clearly cannot be said to be fully carried out. Consequently the petitioners could not be said to have lost their right with reference to them as against the State. In fact, if the State seeks to call the houses in question as the Government premises on the basis of the last mentioned order, it cannot do so. For, if the successor Government is taken to have recognised the order the Ruler would be entitled to claim them. In case the State of Madhya Bharat and later Madhya Pradesh had refused to recognise the same in view of the list of private property of the Ruler settled through Government of India which did not include these houses. It cannot afford proper basis for claiming the same as their property.

28. It thus appears to me to be clear that the orders of the Rulers dated 30-3-1948 and 1-4-1948 do not constitute either law or judicial determination of the question as to title to the three houses. They at the most, are executive in character and on their true construction the State cannot claim the houses in question as Government premises on the strength of these orders. First two questions are thus answered. This takes us to questions Nos. 3, 4, 5 and 6.

29. Before I proceed to consider these questions at this stage it will be useful to give a brief resume of the Madhya Pradesh Government Premises (Eviction) Act, 1952, (Act XVI of 1952).

30. The preamble of the Act shows that the Act is intended to provide for eviction of persons from Government Premises in certain circumstances and for matters connected therewith.

31. Section 2 (b) defines " Government premises " as below :

" In this Act, unless there is anything repugnant in the subject or context:

(b) " Government premises " means any premises belonging to or taken on lease or requisitioned by the State Government." Material part of Section 3 of the Act is as below :

" If the competent authority is satisfied

(a)

(b) that any person is in unauthorised occupation of any Government premises. "

The competent authority may, by notice served by post or otherwise order that, that person as well as any other person who may be in occupation of the whole or any part of the premises shall vacate them within thirty days of the service of the notice.

32. Sub-section 4 of Section 3 of the Act is as below :

" If any person refuses or fails to comply with an order made under Sub-section (1) or (3) the competent authority may, without prejudice to any action that may be taken u/s 9, evict that person from, and take possession of, the premises, and may for that purpose use such force as may be necessary. "

Section 4 of the Act further empowers the competent authority (a Gazetted officer appointed by the Collector) to assess damages on account of use and occupation of the Premises in the unauthorised occupation of any person.

33. Section 5 of the Act provides for an appeal to the Collector against the order of the competent authority. The order passed in appeal, after calling for a report from the competent authority and after giving an opportunity to the appellant to be heard, would under that section, become final.

34. Section 6 of the act provides for bar of jurisdiction of civil Courts. It is in the following terms :--

" No order made by the Collector or the competent authority in the exercise of any power conferred by or under this Act shall be called in question in any Court and no injunction shall be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. "

35. Section 7 of the Act provides for the Rule making power of the Government for carrying out the purposes of the Act and particularly as to the form and manner of service of notice, procedure to be followed in taking possession,

manner of assessing damages and the manner of preferring appeals and the procedure for hearing them.

36. It will thus be seen that the jurisdiction of the competent authority to order any person to vacate the premises in his occupation rests upon these premises being Government premises. This is consequently a jurisdictional fact. The competent authority cannot require a person to vacate the premises in exercise of the power u/s 3 of the Madhya Pradesh Government Premises (Eviction) Act if they are not Government premises. It is also clear that the competent authority, by erroneously holding any premises as Government premises cannot confer upon itself jurisdiction which it does not possess.

37. In (1910) 2 KB 859, Rex. V. Shoreditch Assessment Committee it was observed :

" No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise, subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction, for the existence of the limit necessitates an authority to determine and enforce it; it is a contradiction in terms to create a tribunal with limited jurisdiction and "unlimited power to determine such limit at its own will and pleasure such a tribunal would be autocratic, not limited and it is immaterial, whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact, a Court with jurisdiction confined to the city of London cannot extend such jurisdiction by finding as a fact that Piccadilly Circus is in the ward of Chepe.

38. Thus, even if the jurisdiction of the Civil Court is barred u/s 6 of the Act it is competent for the High Court in exercise of its powers under Article 226 of the Constitution to examine whether the jurisdictional fact regarding the premises being Government premises has been rightly assumed to exist. If according to the view of the High Court there was no lawful basis for such assumption then it is competent for it to act in exercise of its powers under Article 226 of the Constitution for the issue of a writ of certiorari and quashi the orders of the competent and appellate authority. The decisions of the Supreme Court reported in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, and AIR 1962 SC 918, *Income Tax Officer v. S.K. Habibullah* as also the decision (1863) 32 MPLJ 131, *Pease v. Chaytor*, support this principle.

39. In *Hari Kishen Das and Another Vs. Union of India (UOI) and Others*, , it was held by the Punjab High Court with reference to Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), that even a disputed question of title can be determined by the estate officer when he issues notice u/s 4 of the

Act for an action under section 6 of the Act. The High Court there seems to have held that the conclusion, that the premises in question were public premises, was correct and did not involve an erroneous assumption having a bearing on the jurisdictional fact, nor was it against the principles of natural justice.

40. Now in the present case the competent authority namely Sub-Divisional Officer Jhabua held the premises Government premises on the strength of the order dated 1-4-1948. As already discussed earlier, on true construction of the said order, they do not become the property of the State of Madhya Bharat merely because the Ruler claimed in his executive order dated 1-4-1948 that they belong to "khasgi" expressing his intention that on the death of the then occupants he would reoccupy them adding that the occupants had no right to sell or mortgage the same. For, if the claim be true then in that case the properties would become "khasgi" or a private properties and on the death of the occupants revert to the Ruler's family. If untrue they could not devolve upon the State of Madhya Bharat. In any case the premises in question cannot become Government premises on any view of the matter. The order dated 1-4-1948 of Jhabua Ruler does not have the effect of confiscating the houses to the State of Jhabua followed by life-grants to the occupants.

41. Firstly assuming that all "khasgi" properly was not the private property of the Ruler and only such of this settled to be so is his private property till merely because of the claim under an executive order, which is not fully carried out involving total deprivation of all rights of the predecessors of the petitioners including even their rights of possession, the matter did not cease to be justiciable either before or after the Constitution.

42. Secondly assuming that there was genuine dispute as to title between the State of Madhya Bharat and consequently of Madhya Pradesh and the occupants, it is clear from the order of the Sub-Divisional Officer Jhabua and the appellate authority that they have not tried to determine the same judicially by giving due opportunity to the petitioners and the State to adduce evidence on the question of such disputed title. They simply proceed on the basis of the order of the Ruler dated 1-4-1948 treating it practically as law which they were not justified in doing.

43. It is thus clear that the tribunal namely Sub-Divisional Officer Jhabua and the Collector had not decided the jurisdictional fact regarding the premises in question being Government premises correctly and in accordance with the principles of natural justice even assuming that the competent authority could go into the question of disputed title.

44. I am, therefore, of the opinion that it was incompetent for the Sub-Divisional Officer Jhabua as the competent authority u/s 3 of the Madhya Pradesh Government Premises (Eviction) Act, 1952, to hold merely on the basis of the orders of the Ruler of Jhabua dated 30-3-1948 and 1-4-1948 that the houses in the occupation of the petitioners in both the cases were Government premises

and to require the petitioners to vacate.

45. The orders passed by the competent authority i.e., Sub-Divisional Officer Jhabua dated 28-1-1964 under the Government Premises (Eviction) Act, 1952, and those passed in appeal by the Collector Jhabua on 7-6-1964 are hereby quashed.

46. The petitioners are entitled to Rs. 250 as costs in each case.

ORDER

47. (Tare and Krishnan, JJ. D/-1-12 1965)--In accordance with the opinion of the third Judge the petition is allowed with costs which shall be borne as directed by the third Judge. Security costs deposited be returned to the petitioner.