
(2002) 08 AHC CK 0135
In the Allahabad High Court
Case No : Writ Petition No. 4412 (M/B) of 1999

Smt. Rana Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Uttar Pradesh Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 5, 5(1), 9

Citation : (2002) 4 AWC 3016

Hon'ble Judges : Khem Karan, J; Bhanwar Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Khem Karan, J.—In this writ petition under Article 226 of the Constitution of India, the petitioner Smt. Rana Singh has prayed for the following reliefs :

(a) to command the opposite parties to ensure her peaceful living, in house No. 525-Kha/32, in plot No. 10, in Mahanagar, Lucknow ;

(b) to quash the order dated 31.7.1999 (Annexure-20) and order dated 4.10.1999 (Annexure-32), passed by Sri Vinod Shankar Chaubey (opposite party No. 10), in his capacity as the Vtce-Chairman of Lucknow Development Authority (for short L.D.A.) ;

(c) to quash the order dated 1.10.1999 (Annexure-33), passed by opposite party No. 9, Smt. Anita Srivastava as Prescribed Authority, under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (for short Act No. 22 of 1972) ;

(d) to quash the notice dated 1.10.1999 (Annexure-23), Issued by opposite party No. 9 on Form-Kha under Rule 3 of the rules framed under the aforesaid Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Acts, 1972, asking the petitioner and others to vacate the premises mentioned therein by

8.10.1999, else they would be evicted by use of force ;

(e) to direct the authorities concerned to register a criminal case against the opposite party Nos. 11, 12, 13 and 14 and other official concerned, for having committed various offences during illegal eviction of the petitioner on 5.10.1999 ;

(f) to get the entire matter relating to the forcible eviction of the petitioner from the premises in question, inquired into by some independent agency, other than the State Government;

(g) to direct the State Government to compensate the petitioner adequately for gross violation of her fundamental rights.

2. In brief, her case is that she was peacefully residing in house No. 525-Kha/32 situating in plot No. 10 of Mahanagar, and was also in peaceful possession of the plot No. 10. on the basis of registered deed of sale/ assignment dated 2.9.1997 executed by its erstwhile owner/lessee and it was on 5.10.1999 that opposite party Nos. 11 to 14 accompanied, by several other officials, reached the said house with heavy police and P.A.C. contingents and started taking out her household-effects therefrom and dumping the same along the nearby road. She has stated that her protests, requests, appeals did not deter the officials and they said that there were orders from the highest functionary of the State Government, to evict her from the house and plot and to put Sri Alok Gupta in possession. She alleges that her family members including her husband were assaulted, insulted and intimidated and not only this video-camera belonging to her husband was also snatched, because the proceedings of alleged eviction of the petitioner were being filmed. She says in para 48 of the writ petition that apprehending illegal eviction, and some foul play, she had already sent information on 6.8.1999 (Annexure-27) to S.H.O., Mahanagar, to treat the same as first information report and protect her from illegal and forcible eviction, but what to say of protecting her from the same, Mahanagar Police actively participated in her illegal eviction dated 5.10.1999. She goes on to say that her written requests to S.H.O., Mahanagar and to S.S.P., Lucknow to register the crimes and take action, against all those guilty officials who committed various crimes on 5.10.1999, went unheeded.

3. The sum and substance of her case is that she has been evicted from the house and plot in question, otherwise than in accordance with law, by the officials of the State Government and the Lucknow Development Authority and she and her family members have been rendered homeless. Her grievance is that no legal action has been taken against the official concerned, for this highhandedness and for violating the fundamental and other rights of the petitioner.

4. Let us have a resume of the events, that culminated in the proceedings dated 5.10.1999. The disputed plot No. 10 (measuring 11,085 sq. feet), situating in mohalla Mahanagar of city Lucknow and the house No. 525-Kha/32, built therein, were earlier leased out by the State Government in the year 1962, to one Sri

S.C. Gupta, vide registered lease deed dated 26.12.1962, for a period of 30 years w.e.f. 1.8.1958, on the terms and conditions given in the two lease deeds, copies of which are Annexures-1 and 2. It was on 20.6.1970 that Sri S.C. Gupta executed and got registered a deed of declaration, (copy of which is Annexure-3) to the effect that the actual owner of the leasehold rights in the plot and house in dispute was Smt. Kamini Devi daughter of Sri Krishna Narain, who paid the premium and the rent, etc. The name of Smt. Kamini Devi was mutated in the records in place of Sri S.C. Gupta, Sri S.C. Gupta died on 10.10.1971. There is no dispute that Smt. Kamini Devi also get sale deed on 23.2.1991, from Nazul Officer in respect of the house in dispute and not only this, also succeeded in getting the lease of the plot No. 10 renewed for another period of 30 years w.e.f. 1.8.1988, vide deed dated 30.6.1993, copy of which is Annexure-4.

5. Sri Alok Gupta (opposite party No. 15), one of the sons of late Sri S.C. Gupta, moved the Additional District Magistrate (Administration), Lucknow in the year 1992-93 for the declaration, that deed of declaration dated 20.6.1970, executed by his father in favour of Smt. Kamini Devi, the deed of the transfer dated 23.2.1991, executed by Nazul Officer in favour of Smt. Kamini Devi in respect of the house existing in plot No. 10, were null and void and of no legal consequence. The Additional District Magistrate (Administration), Lucknow, registered this application of Sri Alok Gupta as case No. 10/92-93 and issued notices to the L.D.A. and Smt. Kamini Devi. Both of them, namely, L.D.A. and Smt. Kamini Devi filed their objections contending, inter alia that the learned Additional District Magistrate had no jurisdiction to grant the said declaration or to adjudicate the respective rights of the parties. The application of Sri Alok Gupta was rejected on 6.1.1993 (see Annexure-8 and Annexure-R.A. 6). The learned Additional District Magistrate, Lucknow, took the view that he had no jurisdiction to adjudicate upon the matter or to grant the declaration prayed for by Sri Alok Gupta. He observed that the applicant. Sri Alok Gupta was free to get the matter decided by a competent court. The review petition moved by Sri Alok Gupta was also rejected on 8.9.1993 (R. A. 7).

6. Sri Alok Gupta also filed a Civil Suit No. 113 of 1993, in the Court of Munsif South, Lucknow, (Annexure-5 is the copy of the plaint), arraying Smt. Kamini Devi and Lucknow Development Officer (perhaps L.D.A.) as defendants. Amongst other reliefs, the prayer for granting him leasehold rights in the property in question, was also made. It appears that the temporary injunction granted by the trial court, was vacated by the appellate court, in Misc. Civil Appeal No. 234 of 1993, filed by Smt. Kamini Devi. The suit was dismissed in default on 22.2.1999. The restoration (Misc. Case No. 16 of 1999) is pending.

7. Undisputedly, the house in dispute was earlier in the tenancy of Smt. Rajul Basu. In the late eighties, Smt. Kamini Devi, moved one application u/s 21 of U. P. Act No. 13 of 1972. Copy of order dated 3.2.1995 (Annexure-15), reveals that on representation that Smt. Rajul Basu had vacated the house in question, the same was allotted on 3.2.1992, to one Sri Bipin Agarwal. Smt. Kamini Devi

moved u/s 16 (5) of U. P. Act No. 13 of 1972, for review of this order of allotment, on the grounds, inter alia, that Smt. Rajul Basu had handed over the possession to her and she was in peaceful possession thereof. She also alleged that the allottee Sri Bipin Agarwal, was none else but brother-in-law of Sri Alok Gupta. The learned Rent Control and Eviction Officer, recalled the order of allotment, with the observation that Sri Alok Gupta, suppressed material facts, while giving information regarding the vacancy.

8. It was on 2.9.1997, that Smt. Kamini Devi, alienated her entire rights and interest in the plot and house, to the petitioner and Sri M. M. Dalmiyan, through a registered deed of sale/assignment. It also transpires from perusal of order dated 22.10.1997 (Annexure-17), passed u/s 16 of U. P. Act No. 13 of 1972, that the house in question was released in favour of the petitioner and Sri Dalmiyan. It is never the contention of Sri Alok Gupta, that this release order dated 22.10.1997, has been set aside or recalled by any competent authority or the Court. On the other hand, copy of order dated 28.7.1999 (Annexure-18) reveals that the similar request of Sri Gupta, for release of the house in question was rejected.

9. But undaunted by all the aforementioned adverse orders, Sri Gupta left no hope and continued his efforts, on the administrative side. He gave one application dated 8.7.1998, to the Vice-Chairman, L.D.A., and one application dated 6.8.1998, to the Hon'ble Chief Minister, Government of U. P., for cancellation of lease executed in favour of Smt. Kamini Devi and for mutating the names of the sons and daughters of late Sri S.C. Gupta. He alleged that the deed of declaration, executed by his father. In favour of Kamini Devi, as well as renewal of lease in her favour and the sale of house to her, were void and of no legal consequence. The copy of letter dated 4.6.1999 (annexed with the supplementary-affidavit of Sri Alok Gupta), written by the Government to L.D.A. as well as the copy of order dated 31.7.1999 (Annexure-20) passed by the Vice-Chairman of L.D.A. reveal that the opinion of the Law Department of the Government was also obtained in the context of these assertions of Sri Gupta. The view of the Law Department has "unconventionally" been reproduced verbatim in Government letter dated 4.6.1999. "Unconventionally" because of the following provisions contained in para 3.18 of the Legal Remembrance Manual :

"Para 3.18 Legal Remembrancers" opinion confidential.--Every officer of Government shall treat as confidential the opinion of Legal Remembrancer that may come to the knowledge or in his possession in the course of the official duty and shall not communicate such opinion or any portion thereof except to an authorised person."

10. In this otherwise "laboured" legal opinion, the Law Department appears to have endorsed all the contentions of Sri Alok Gupta and went to the extent to advise the Government to consider to renew the lease in favour of the legal heirs of late Sri S.C. Gupta. There is no dispute that the copy of the G.O. dated

4.6.1999 containing the opinion of the Law Department in extenso was not only communicated to the L.D.A. but its copy was also sent to opposite party No, 15. In this otherwise laboured in the sense that following provisions contained under L.R. Manual prohibited the administrative departments of the Government from seeking any opinion of the Law Department on a point which was likely to arise in a judicial or quasi-judicial proceedings pending before any Court or Tribunal :

"Para 20.11 : (1) Matters on which the opinion of Legal Remembrancer will not be sought.--(i) Every care will be taken to avoid unnecessary reference to the Legal Remembrancer,

(it) Generally the opinion of the Legal Remembrancer will not be sought on the following matters :

(a) Points arising for decision in a judicial or quasi-judicial proceedings before the Court or Tribunal or any officer empowered to exercise jurisdiction in such proceedings under a statute ;

(b) Points concerning mainly question of fact or policy matters ;

(c) Hypothetical cases ;

(d) Ordinarily departmental procedure of which the department itself should have special knowledge."

11. In view of the aforesaid provisions in the L.R. Manual, the Law Department should have declined to give its opinion on the points referred to it in the face of the pendency of the Civil Suit No. 113 of 1993 or in the face of the pendency of Misc. Case No. 16 of 1999 referred to on page 5 of this order, but unfortunately the Law Department chose for itself to almost adjudicate the respective rights of the parties in the shape of its opinion reproduced in G.O. dated 4.6.1999.

12. Armed with this Government order dated 4.6.1999 and the opinion of the Law Department of the Government of U. P., Smt. Anita Srivastava (opposite party No. 9), in her capacity as Joint Secretary to L.D.A. issued a notice dated 8.6.1999 (copy of which is Annexure-10) to the petitioner, at her address of house No. C-957/56, Mahanagar, Lucknow, asking her to appear before her on 14.6.1999, with all the relevant papers, pertaining to the plot No. 10 and the house built thereon. The subject of the notice was the request of Sri Alok Gupta for cancellation of the lease in the name of Smt. Kamini Devi. Annexure-11 reveals that pairokar of the petitioner appeared on 14.6.1999 and requested the authorities concerned to fix 22.6.1999, as both the noticees were out of station. Annexure-12 is another notice dated 15.6.1999 in continuation of the notice dated 8.6.1999 and this was issued by Sri Vinod Shankar Chaubey, in his capacity as Vice-Chairman of L.D.A. In this notice dated 15.6.1999, it was clearly stated as to why the lease executed in favour of Smt. Kamini Devi, in respect of the plot and house be not cancelled and why the lease be not renewed in favour of the legal heirs of late Sri S.C. Gupta, in view of the Government order dated 4.6.1999. Annexure-S.A. 23 is the copy of the letter dated 15.6.1999. written by

Raja Ajit Pratap Singh, father-in-law of the petitioner, to the Vice-Chairman of L.D.A. in which he said that the correct address of his daughter-in-law was 10 Mahanagar Housing Scheme, Sector-B, but since she used to stay with him in the days when her husband was out, so it would be proper to send the communication at his address. He also mentioned in this letter that since the house of his daughter-in-law was under repairs, so on her return from Ahamdabad, she would stay with him. Smt. Rana Singh requested the Vice-Chairman to supply the copy of the application of Sri Alok Gupta. Smt. Kamini Devi also wrote a letter on 28.6.1999 (Annexure-20) to the Vice-Chairman informing him that she had already transferred the property to the petitioner and Sri Dalmiyan. Annexure-19 reveals that both the purchasers appeared before the Vice-Chairman on 1.7.1999 and requested him to fix 15.7.1999 for hearing.

13. The Vice-Chairman of L.D.A. passed an order dated 31.7.1999 (Annexure-20) to the effect that the natural heirs of late Sri Gupta were entitled to get their names mutated in the records as lessees, in place of late Sri S.C. Gupta as Smt. Kamini Devi got no rights on the basis of the deed of declaration, executed by late Sri Gupta and the sale of 1991 and the renewal of 1993 in her favour, were of no legal consequence as opined by the Law Department in Government order dated 4.6.1999. He also concluded that the transfer/assignment by Smt. Kamini Devi, in favour of Smt. Rana Singh and Sri Dalmiyan was without any right. He, however, left the parties to get their respective rights adjudicated by competent civil court. By this order dated 31.7.1999, the Vice-Chairman of L.D.A. directed for expunging the name of Smt. Kamini Devi and her transferees. But this much is clear from this order dated 31.7.1999 that natural heirs of late Sri S.C. Gupta were not found in possession of the premises in question and according to the Vice-Chairman, the same were possibly in possession of Smt. Kamini Devi or her transferees. He said that in view of what he found, possession of Smt. Kamini Devi, and her transferees was unauthorised.

14. Aggrieved of this order dated 31.7.1999 of the Vice-Chairman of the Lucknow Development Authority, the petitioner and Sri Dalmiyan filed a regular Civil Suit No. 2061 of 1999 for perpetual prohibitory injunction, in the Court of Civil Judge (Senior Division) Malihabad, Lucknow.

15. While the said Suit No. 2061 of 1999 was pending in the Court opposite party No. 9, namely, Smt. Anita Srivastava issued a notice u/s 4 (1) of Act No. 22 of 1972, asking the petitioner to show cause as to why she should not be evicted from plot No. 10, Mahanagar, Faizabad Road, Lucknow. According to the report of Nazul Officer, her possession was unauthorized over the same. The copy of this notice as well as the copy of the report of Nazul Officer is Annexure-21, to the writ petition. It transpires from the perusal of the copy of report of Nazul Officer that initially Smt. Kamini Devi, Sri M. M. Dalmiyan and Smt. Rana Singh were arrayed as unauthorized occupants of plot No. 10 of Mahanagar, Faizabad Road, Lucknow. The names of Sri Aditya Narain, Sri Ashok Kumar and Sri Arjun were also added as opposite party Nos. 4, 5 and 6 respectively. What is relevant is

that amongst the alleged unauthorized occupants of plot No. 10 of Mahanagar, the petitioner was one of them. Smt. Rana Singh and Sri Dalmiyan. filed their objections (copy of which is Annexure-22) contending, *infer alia*, that the proceedings for eviction under the said Act, 1972, were not maintainable because the premises in question were not the "public premises" and because they were not unauthorized occupants. The Prescribed Authority appears to have passed final orders on 1.10.1999, copy of which is Annexure-33. There is no dispute that Smt. Kamini Devi has already filed an appeal u/s 9 of the Act of 1972 and the same is pending. In this order dated 1.10.1999 itself, the alleged unauthorized occupants were given time to vacate the premises in question by 8.10.1999. A separate notice (Annexure-23) was also issued on 1.10.1999, purporting to be under Rule 3 of the rules framed under the said Act No. 22 of 1972. In this notice, the unauthorized occupants were directed to vacate the premises by 8.10.1999, else the force was to be used to evict them.

16. As if the order dated 1.10.1999 passed by the Prescribed Authority for eviction of the petitioner and others from the premises in question was not sufficient enough to achieve the obvious object, Sri Vinod Shankar Chaubey, the then Vice-Chairman of L.D.A. passed one more order, allegedly on 4.10.1999, copy of which is Annexure-32, to the writ petition. The contents of this order reveal that it was passed on the complaint of Sri Alok Gupta that the premises in question were being illegally occupied by Sri Aditya Narain, Ashok Kumar and Arjun. Sri Chaubey took into consideration the Government order dated 4.6.1999 and his own order dated 31.7.1999, for holding that those three persons were liable to be evicted and the natural heirs of late Sri S.C. Gupta were to be put into possession over the same. He also referred to his powers under para 5 (3) of the Nazul Manual and to the decision of this Court in S. N. Kapoor's case, 1998 (16) LCD 72.

17. On the next dated i.e., 5.10.1999, eviction was carried out and Sri Alok Gupta (opposite party No. 15) was put in possession of the plot and the house in dispute. Sri Vinod Shankar Chaubey (opposite party No. 10) has deposed in his affidavit dated 11.10.1999, that these were the trespassers who were evicted from the premises in question and not the petitioner. Smt. Anita Srivastava (opposite party No. 9) has also deposed in paras 14. 37 and 43 of her counter-affidavit dated 7.12.1999, that these were Sri Aditya Narain. Sri Ashok Kumar and Sri Arjun who were evicted pursuant to the order dated 4.10.1999 passed by the Vice-Chairman and not the petitioner. She has tried to say that since the petitioner was never in possession of the premises in question, so there was no question of her eviction on 5.10.1999. Similar is the stand of opposite party No. 15.

18. Soon after the presentation of this writ petition, this Court passed an interim order on 9.10.1999 commanding the Lucknow Development Authority. District Magistrate, Lucknow, Senior Superintendent of Police, Lucknow, Circle Officer, Mahanagar, to restore back the possession of the premises to the petitioner,

within 48 hours and deliver the goods back to her. In compliance of this interim mandamus, the possession over the property in dispute was restored back to the petitioner.

19 In spite of the service of notices, opposite party Nos. 11, 12, 13 and 14, against whom there were clear allegations of misbehaviour, assault, etc. have not thought it proper to file any counter-affidavit or to controvert the allegations made by the petitioner. Sri Aditya Narain (opposite party No. 16), who was one of the alleged unauthorized occupants of the premises in question and who had allegedly been evicted on 5.10.1999, has denied that he was ever in possession of these premises or was evicted from those premises.

20 Sri Ajai Singh, husband of the petitioner has filed supplementary-affidavit on 13.8.2001, saying that the petitioner had submitted a complaint to the National Human Rights Commission, New Delhi and acting on it, the Commission registered Case No. 18518/24/99-2000. regarding the events dated 5.10.1999 and desired the Director General of Police to send a report in six weeks and in compliance of these directions of Commission, inquiry was conducted by the Superintendent of Police (West) Lucknow, Sri R.K.S. Rathor. It has also been said in this affidavit that the statements of the deponent as well as the petitioner were recorded and inquiry report dated 21.11.2000 has been submitted to the Commission. It is further deposed that the allegations made in the complaint to the Commission were found true. It has also been said that on the directions of the Commission, for taking suitable action against officials at fault, the State Government/police authorities started taking action and during the course of which statement of the petitioner and others were recorded before Additional Superintendent of Police (East), Lucknow, Sri Rajesh Pandey. It is said that statement of Sri Ansuman Singh, son of the petitioner and Sri Ashok Singh, brother-in-law of the husband of the petitioner and Sri Kanhaiya Lal Gurnami were also recorded by Additional Superintendent of Police (East), Lucknow. Along with this supplementary-affidavit of Sri Ajai Singh, copy of the report dated 21.11.2000, made by Sri R. K. S. Rathor has also been filed. This report says that eviction proceedings dated 5.10.1999, were carried out in compliance of the orders dated 4.10.1999 of Sri Vinod Shankar Chaubey, the then Vice-Chairman of the L.D.A. The names of the police officials, who participated in the said proceedings have also been mentioned, in this report dated 21.11.2000. Certain officials have been found guilty of misbehaviour, assault, etc. Sri Rathor has recommended that action be taken against Sri Devi Dayal Chaturvedi, Officer incharge, Mahanagar Police Station, Lucknow, Sri K.K. Misra, Sub-Inspector of Mahanagar Police Station, Lucknow and other police officials. Neither Sri Alok Gupta nor any other opposite parties has ventured to controvert the facts stated by Sri Ajai Singh in supplementary-affidavit dated 13.8.1991.

21 We have perused the entire material on the record and have also heard quite at length, Sri G.K. Mehrotra, Sri Anupam Mehrotra, the learned counsel for the petitioner and Sri Prashant Chandra, the learned counsel for the opposite party

No. 15. The learned counsel for the L.D.A. was given liberty to file his written arguments, if any, within a week. Likewise, the learned counsel for the opposite party No. 16 was also given liberty to file his written arguments. Unfortunately, none of them has filed any such written arguments.

22. Sri Prashant Chandra, has argued with all possible vehemence that since there is a serious dispute as to whether the petitioner was evicted on 5.10.1999, from the premises in question, so in view of the law laid down by the Apex Court in Krishan Lal Gupta and Others Vs. Adhishashi Adhikari and Others, . P.R. Sinha and Others Vs. Inder Krishan Raina and Others, , State of Rajasthan v. Bhawani Singh and Ors., 1993 (1) SCC 306 and AIR 1997 993 (SC) , this Court should decline to interfere in the matter. He has also argued that the question whether the cancellation of lease renewed in favour of Smt. Kamini Devi is valid or invalid cannot be allowed to be agitated under Article 226 of the Constitution of India. In this connection, the attention of this Court has been drawn towards the law laid down by the Apex Court in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, .

23. His second submission is that the assertion of the petitioner in para 7 and elsewhere that she has been rendered "homeless", by eviction dated 5.10.1999, is totally false in view of her address, given in Annexures-10, 12, 13 and 14 and since she has been able to secure an interim mandamus dated 9.10.1999, by alleging falsehood, so in view of the law laid down in Gulshan Kumar Vs. The Collector, Ghaziabad and others, and Dhananjay Sharma Vs. State of Haryana and Others, the writ petition deserves to be dismissed and she be proceeded against, for attempting to pollute the due process of law. Sri Prashant Chandra has also taken the Court through a Division Bench decision of this Court rendered in Satya Narain Kapoor Vs. State of U.P. and others, so as to support the order dated 31.7.1999 and 4.10.1999 of the Vice-Chairman.

24. On the other hand, Sri G.K. Mehrotra, the learned counsel appearing for the petitioner argues that there was no dispute that the petitioner was occupying the premises in question, before she was forcibly evicted otherwise than in accordance with law by the officials of the State and the L.D.A., on 5.10.1999. He goes on to argue that the proceedings under Act No. 22 of 1972, against the petitioner and others and the eviction order dated 1.10.1999, passed by the Prescribed Authority, asking her and others to vacate the premises by 8.10.1999, leave no room for saying that the petitioner was not in occupation of the house in question or that she was not evicted on 5.10.1999. According to him, the question as to whether the possession of the petitioner over the premises in question was authorized or unauthorized, may be in dispute, but it was never in dispute that she was in occupation thereof. Sri Mehrotra goes on to argue that it is a fact that excepting the petitioner and Sri Dalmiyan, none of the other alleged unauthorized occupants, has come forward, to oppose the eviction proceedings under Act No. 22 of 1972 or none of them has challenged the correctness or validity of the eviction order dated 1.10.1999, by filing an appeal. He says that it

is also a fact that none of the alleged unauthorized occupants, referred to in order dated 4.10.1999 of the Vice-Chairman, is coming forward to complain that he or she has been forcibly evicted on 5.10.1995 or her household effects, have been thrown away on the road. He submits that one of the so-called unauthorized occupants, namely, Sri Aditya Narain Singh has filed his affidavit here in this writ petition, saying that he was never in possession of these premises nor was he evicted by the authorities on 5.10.1999. According to him, the dispute of fact, so as to contend that this Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, must be real one and not got up or fanciful or created one. He says that it is more than evident that the eviction proceedings dated 5.10.1999 were carried out otherwise than in accordance with law and so, this Court has to intervene in this matter to preserve the "rule of law" and to deter law breakers, to take the law in their hands and also to vindicate the position of the persons, who were victim of highhandedness on the part of the officials of the State and its instrumentality. Sri Mehrotra contends that, in view of the fact that the Prescribed Authority had already given time upto 8.10.1999, to vacate the premises and in view of the possibility of the order dated 1.10.1999 being stayed, in appeal u/s 9 of Act No. 22 of 1972, there was no certainty to put opposite party No. 15 in possession in near future, so a totally illegal and unconventional order was passed on 4.10.1999 by Sri V. S. Chaubey, the then Vice-Chairman of L.D.A. He says that neither Nazul Manual nor the Division Bench decision of this Court in S.N. Kapoor's case (supra) provides a basis for such eviction order dated 4.10.1999. He contends that even if it is assumed for the sake of argument that the Vice-Chairman of L.D.A. possesses such power in the Nazul Manual, there, was hardly any need to pass any such order, when the Prescribed Authority under the Act No. 22 of 1972, had already passed eviction order against those three persons and others on 1.10.1999. He says that order dated 4.10.1999 is totally without Jurisdiction and is also mala fide as it was passed to frustrate the orders that might be passed, in an appeal u/s 9 of Act No. 22 of 1972 against the order dated 1.10.1999.

25. For the reasons to be stated very shortly, we do not intend to go into the correctness or otherwise of order dated 31.7.1999, by which the names of Kamini Devi, the petitioner and Sri Dalmiyan were ordered to be expunged and the names of the heirs of late Sri S.C. Gupta, were to be substituted/mutated, as lessees, over the premises in question. According to the provisions contained in Nazul Manual, the party aggrieved by such an order of mutation, has to establish his/her rights, title or interest in the nazul property, by filing a suit in a court of competent jurisdiction. Undisputedly, the petitioner and Sri Dalmiyan, have filed a Civil Suit No. 2061 of 1999, in the Court of Civil Judge (Senior Division) Malihabad, District Lucknow, challenging the correctness of the said mutation order dated 31.7.1999. Secondly, it is never the contention of contesting opposite parties or the petitioner, that eviction dated 5.10.1999, was carried out, in compliance of that order of 31.7.1999. So, there is no point in peeping inside

the order of 31.7.1999.

26. We hold the same view, so far as the order dated 1.10.1999 (Annexure-33) and notice dated 1.10.1999 (Annexure-23), are concerned. This order dated 1.10.1999 passed by the prescribed authority, u/s 5 (1) of Act No. 22 of 1972, is already under challenge, in an appeal u/s 9 of the said Act. Secondly, according to the stand taken by the contesting opposite parties eviction dated 5.10.1999, was not pursuant to that order of 1.10.1999. Thirdly, under the scheme of the Act No. 22 of 1972 and the rules framed thereunder, no actual eviction, pursuant to this order dated 1.10.1999, was legally possible, at least on 5.10.1999, especially when the Prescribed Authority itself, allowed time upto 8.10.1999, for vacating the premises. Perhaps, the contesting opposite parties were alive to this legal position, so they are rightly advised, not to defend the eviction dated 5.10.1999, on the basis of order dated 1.10.1999. The notice dated 1.10.1999 (Annexure-23) is consequence of order dated 1.10.1999 and it has to stand or fall, along with the same. Thus, there appears to be no necessity to examine in this writ petition, the correctness or validity or otherwise of eviction order dated 1.10.1999 and notice dated 1.10.1999. Rather, it would be inexpedient to embark upon the same, when the same are before the District Judge, in an appeal u/s 9 of the Act No. 22 of 1972.

27. After going through the entire material on record and considering the respective submissions, we find it difficult to accept the contention of Sri Prasant Chandra that there is serious dispute on the point whether petitioner was evicted on 5.10.1999, from the premises in question. The events to which a brief reference has already been made, coupled with the eviction order dated 1.10.1999, enforced by overwhelming circumstances, leave no scope for such argument that the petitioner was not evicted by force, on 5.10.1999. There is absolutely no need to discuss each and every event for saying that it was never in dispute that the petitioner was in occupation of the premises in question. Whether her possession was authorized or unauthorized is to be looked into, in appeal u/s 9 of Act No. 22 of 1972 or in any other competent proceedings. We are firmly of the view, that it was the petitioner, who was actually evicted by force on 5.10.1999. The alleged dispute of fact, as pressed into service by contesting opposite parties is no dispute in reality and it would be hazardous to throw away, otherwise tenable writ petitions on the basis of such artificial creation of dispute of fact. So, the judicial pronouncements, cited by Sri Prashant Chandra, do not apply to the facts and circumstances of the case in hand.

28. The main grievance of the petitioner is against the eviction proceedings dated 5.10.1999, which according to the contesting opposite parties were carried out pursuant to the order dated 4.10.1999, passed by the Vice-Chairman of L.D.A. in purported exercise of his powers under paras 5 and 5A of the Nazul Manual and in obedience of the general directions of this Court issued in S.N. Kapoor's case (supra). Although this order dated 4.10.1999 does not refer to the petitioner nor authorizes any body to evict her from the premises in question, yet

since she was actually dispossessed from the premises in question on the basis of this order dated 4.10.1999, so we find it appropriate to examine its correctness or otherwise. None of the parties to the writ petition, has said that the said order dated 4.10.1999 is under challenge in any other proceedings (except in this writ petition), before any other Court or authority. So, there seems to be no difficulty in examining its validity in this writ petition.

29. But before we do so, it would be useful to recall the following observations of the Apex Court made in *Bishan Das and Others Vs. The State of Punjab and Others*, :

"We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order.

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.

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 recognized 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."

30. Thus, even the State or its instrumentalities cannot be allowed to take the law in its own hands, by taking forcible possession except according to the procedure established by law (see *Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy* AIR 1924 PC 144 *K.K. Verma and Another Vs. Union of India and Another*, , *Yar Muhammad and Another Vs. Lakshmi Das and Others*, , *Lallu Yashwant Singh v. Rao Jagdish Singh and Ors.* AIR 1968 SC 620 *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, and *M/s. Anamallai Club Vs. Government of Tamil Nadu* and others,

31. It is because of this legal position that laws have been framed such as contained in Act No. 22 of 1972, for regulating the eviction of unauthorised occupants from the public premises. An elaborate procedure is prescribed which ensures reasonable opportunity of hearing to the alleged unauthorised occupants. In case an order of eviction is passed, a remedy of appeal has also been given. Likewise if an ordinary citizen wants to evict unauthorised occupants from its premises, he has to bring a suit or action in one Court or the Tribunal. The law prescribes a procedure for regulating eviction of unauthorised occupants of such premises and what is material is that a reasonable opportunity of hearing is ensured even in those cases. Normally, remedy of appeal or revision is provided to the aggrieved persons, especially when the eviction order is passed by an authority not well-versed in law.

32. All this is as per the requirement of the "rule of law". Any provision in any law not in consonance with the requirement of "rule of law", has to be termed arbitrary and liable to be struck down as such. The Apex Court has said in S.G. Jaisinghani Vs. Union of India (UOI) and Others,

"The absence of arbitrary power is the first essential on which whole constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decision should be made by the application of known principles and rules and, in general, such decision should be predictable and citizen should know where he is. If decision is taken without any principle or without any rule, it is unpredictable and such decision is anti-thesis of the decision taken in accordance with rule of law."

33. Numerous authoritative judicial pronouncements of this Court and the Apex Court can be cited to say that none can be dispossessed by force, except according to the procedure established by law. This fundamental rule applies with equal force to the Government and its instrumentalities. Necessary corollary of it is that none can be evicted or dispossessed from immovable property by an executive order/action, having no sanction of law.

34. Adverting to the impugned order dated 4.10.1999, we have no slightest hesitation in terming it as totally illegal, improper, unnecessary and mala fide one. Firstly, paras 5 and 5A of the Nazul Manual, relied on by the authority for deriving the power to pass the eviction order dated 4.10.1999 do not contain any such powers. Paras 5 and 5A of the Nazul Manual are being reproduced below for easy reference :

"5. Change entries in nazul register.--Entries in the nazul register shall not be changed except under the orders of the Collector. Where a local authority is entrusted with the management of nazul, it shall be the duty of local authority to maintain nazul register up-to-date and where it proposes to change any entry in the nazul register as a result of succession, transfer or assignment of any lease for building purposes, or on the discovery of any error or omission in such register, it shall submit its proposal to the Collector, who, if he is satisfied after such enquiry as he considers necessary, that a succession, transfer or assignment has taken place or that an error or omission exists, shall order the register to be corrected accordingly.

5A. Mutation Procedure.--(1) On each transfer by succession, sale, assignment or otherwise, the lessee and the person to whom the lease rights are so transferred, shall within two months of the same, deliver a notice in writing to the Collector or the Nazul Officer appointed by the Collector, setting forth the names and other particulars of the persons from whom and to whom the transfer takes place and the nature and description of the transfer.

(2) The Collector, on receiving such report, or upon the facts coming otherwise to his knowledge, shall decide the matter on the basis of possession, and shall

order mutation in the name of the transferee in the records accordingly.

(3) If in the course of enquiry into a dispute under this rule the Collector is unable to satisfy himself as to which party is in possession he shall ascertain by summary enquiry the person best entitled to the property, and shall order the name of such person to be entered in the records accordingly.

(4) No order passed under this rule shall debar any person from establishing his right to the property in any civil or revenue court having jurisdiction,"

35. At least the learned counsel for the contesting opposite parties were not in a position to point out any other provision in that manual which empowers the L.D.A. to evict unauthorised occupants from the nazul property. Secondly, even if it is assumed for the sake of argument that Nazul Manual does contain any such provision, it cannot have the force of law as according to the view taken by this Court in S.N. Kapoor's case (supra). Nazul Manual is nothing but a compilation of executive orders issued from time to time by the Government or other authorities. There is nothing in the Nazul Manual to regulate the procedure of the eviction of unauthorised occupants, wherein reasonable opportunity of hearing has been guaranteed. A pointed query was put to Sri Prasant Chandra as to whether under the scheme of the eviction of unauthorised occupants from the nazul property, parallel proceedings were permissible, one under the Nazul Manual and the other under Act No. 22 of 1972, Sri Prasant Chandra was not in a position to reply it satisfactorily. Fourthly, we have not been able to understand as to what was the necessity of passing this order dated 4.10.1999, when there was already an eviction order dated 1.10.1999 passed by the Prescribed Authority u/s 5 (1) of Act No. 22 of 1972 in respect of the same premises and against the same persons and few others.

36. In the circumstances, we are justified in accepting the argument of Sri G.K. Mehrotra that the necessity of passing that order dated 4.10.1999 was with a view to put the opposite party No. 15 in possession before the eviction order dated 1.10.1999 was stayed in appeal u/s 9. He says that according to the eviction order dated 1.10.1999, dispossession was not possible before 8.10.1999 and the Vice-Chairman of L.D.A. was somehow under pressure to put opposite party No. 15 in possession and was, therefore, not prepared to take any risk of the eviction order being stayed in appeal u/s 9 of Act No. 22 of 1972. The order dated 4.10.1999 is, therefore, mala fide also as its object was not to serve any public interest but its object was to serve the private interest of opposite party No. 15. We, therefore, find good grounds for quashing this order dated 4.10.1999 (Annexure-32) passed by opposite party No. 10.

37. The Apex Court, in M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others, , had already recognized the right to shelter as a fundamental right under Article 21 of the Constitution. We have already concluded that the petitioner and her family members were forcibly and illegally evicted on 5.10.1999 from the premises in question. If she contends that she was rendered homeless, we think

she is perfectly justified. There is no material on record to say that she owns any other residential house in the city of Lucknow except the one in dispute. In public law, she is entitled to suitable compensation as held by the Apex Court in *Chairman, Railway Board and Ors. v. Chandrima Das and Ors.* AIR 2000 SCW 649.

38. The petitioner has asserted in so many words that the officials and officers who carried out the eviction proceedings on the spot, misconducted in various ways and even committed crimes and when she went to lodge F.I.R. at P.S. Mahanagar, it was not lodged and request to S.S.P., Lucknow, also went unheeded. Unfortunately, opposite party Nos. 11 to 14, against whom there were specific allegations of misconduct, have not chosen to controvert the same.

39. Plight of the petitioner and her family members, whose house-hold effects were forcibly taken out, dumped along the road and her requests, appeals and cries were mocked by the officials on the spot, can easily be visualized. She has said very clearly that she comes from a very reputed family as her father-in-law Raja Ajit Pratap Singh was not only the Member of the Lok Sabha for three terms but was also Member of the State Cabinet and Vice-Chairman of State Planning Commission. Newspaper clippings containing photographs of the scattered and dumped house-hold effects outside the premises and along the road speak a lot. The trauma through which the petitioner and her family members had to go through on 5.10.1999 can hardly be described in words. The Court has no hesitation in saying that all this was possible because of the order dated 4.10.1999 of the Vice-Chairman of L.D.A. It was that order which allegedly clothed the authorities to execute the eviction proceedings on the spot. She has said it in so many words that since the highest executive functionaries of the State or someone from the functionary was determined to put opposite party No. 15 in possession and since the Vice-Chairman, L.D.A., felt committed to execute his wishes, so he ensured forcible and illegal eviction of the petitioner and, illegal induction of opposite party No. 15.

40. After considering the entire facts and circumstances, we find it just and proper to award a compensation of Rs. 1 lakh to the petitioner for her illegal eviction dated 5.10.1999 and for mental torture and other sort of humiliation, referred to above. We also think it proper to observe that the Government shall be free to recover this amount or any part of it from the salary or other dues of Sri Vinod Shankar Chaubey, the then Vice-Chairman of L.D.A., who passed the illegal and mala fide order dated 4.10.1999.

41. We propose to leave it to the State Government to get the entire episode enquired into by an independent person and to take appropriate action against the persons found guilty in such inquiry. It is also expected that the action as might have been recommended by the Human Rights Commission will be taken within the shortest possible time, if it has not already been taken.

42. Thus, as a result of the aforesaid discussion, impugned order dated

4.10.1999 (Annexure-32) passed by the then Vice-Chairman of L.D.A., is hereby quashed and the interim mandamus dated 9.10.1999 issued in this writ petition, is hereby affirmed. The opposite parties will not interfere with the possession of the petitioner over the premises in question except according to the procedure established by the law or except without there being any order of the competent court or the authority passed in accordance with law. We further direct the State Government to pay an amount of Rs. 1 lakh within a period of two months to the petitioner as compensation, but the State Government shall be free to recover this amount in whole or in part from the salary or other dues of Vinod Shankar Chaubey, the then Vice-Chairman of L.D.A. The State Government is expected to get the entire episode of illegal eviction of the petitioner enquired into by an independent person and to take necessary action accordingly against the person found guilty in that inquiry. We also expect that the State Government will take suitable action within a reasonable time, on the basis of the enquiry conducted pursuant to the directions of the National Human Rights Commission, (referred to in the supplementary-affidavit dated 13.8.2002 of Sri Ajay Singh). The petitioner will get Rs. 10,000 as costs from opposite party No, 10. Petition stands finally disposed of accordingly.