

(1999) 12 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 10476 of 1995

Smt. Sushila Srivastava and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 98, Order 21 Rule 99

Citation : (2000) 1 PLJR 301

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : R.B. Mahto, Umesh Prasad Singh, Ray Shivajee Nath, Indrajeet Singh, Sudhir Kumar Ray and Amrendra Kumar in 10476, M/s Ray Shivajee Nath and Indrajeet Kumar in 10532, 10706, 10760, 2234, 2250 and 3459 and 10746, M/s Umesh Prasad Singh and Rajeev Ranjan Prasad in 10847, M/s Naveen Sinha, Anil Kumar Saha and Sunil Kumar Ravi in 10699, 2024 and 2444, M/s S.S. Asghar Hussain and S.S. Nayyar Hussain in 11175, 10923, 10825 and 10824, M/s. Raghib Ahsan and K.A. Siddiqui in 10621, 10580 and 10524, Mr. Janardan Singh in 328, M/s. Y.C. Verma and U.L. Prasad No. 1 in 10486, M/s Sharwan Kumar, Rajiv Nayan Singh and Shola Sandhwar in 10208 and 980, M/s Gajendra Kumar Jha and B.B. Jha in 11785, Mr. Kumar Alok in 10613, M/s D.K. Dubey and Dinabandhu Mishra in 10598 and 11712, M/s M.P. Sinha and Naveen Kumar Sinha in 10972, for the Appellant; Ganga Prasad Roy, Satish Kumar Sinha and Prabhat Kumar for the State, Mr. H.S. Himkar for the P.R.D.A., M/s. Jitendra Prasad Singh and Bishwajeet for the Patna Municipal Corporation and Mr. Braj Kishore Prasad for the HUDCO, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—This batch of 31 writ petitions is before this court as a result of the unfortunate insistence by the State Government to achieve its desired objective through means which are quite foreign to the system of law. Three quarters of a century ago the Privy Council in AIR 1924 144 (Privy Council) made the following observation:

In India persons are not permitted to take forcible possession; they must obtain

such possession as they are entitled to through a court.

This succinct statement of the legal position in this country, in contradistinction to the position in English law, was expressly approved by the Supreme Court in *Yashwant Singh vs. Jagdish Singh*, AIR 1968 S.C. 620. In *Yashwant Singh*, the Supreme Court expressly approved the Privy Council decision in *Midnapur Zamindari Company* and the decisions of the Bombay and Allahabad High Courts in *K.K. Verma and Another Vs. Union of India and Another*, and in *Yar Muhammad and Another Vs. Lakshmi Das and Others*, . The same view was reiterated by the Supreme Court in *Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao*, when it observed as follows:

It is a well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.

2. Earlier in *Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another*, , the Supreme Court had also held that:

The summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of Government if there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 (of A.P. Land Encroachment Act) for evicting the person who is in possession of the property under a bonafide claim or title. The summary remedy prescribed by Section 6 is not the kind of legal process suited to an adjudication of complicated questions of title.

3. However at the turn of the century the State Government seems to think otherwise. It seems to take the stand that it would be sufficient if the Government was satisfied that the title in the land vested in it and then it would be open for it to evict the occupants of the land and the buildings constructed thereon, if necessary by use of force, in order to resume its possession. Leaving aside a suit before a civil court, which of late has acquired a reputation for delay, even proceedings of a summary nature under various relevant enactments seem to be considered as being too dilatory to suit the convenience and objective of the State Government in getting the disputed premises vacated from their present occupants. And hence, it seems that the State Government can think of no other way but to get the disputed premises vacated only by use of force. It is the refusal of the State Government to follow the due course of law and its insistence to resume possession of a large area of land, having numerous buildings and structures, by evicting their occupants by use of executive force that is at the crux of the dispute in this batch of cases.

4. The petitioners in this batch of cases, whose number runs into more than 200,

have their shops and business premises in a locality of this town commonly known as the New Market Area (lying north west of the Patna railway station). They came to this court seeking its protection against the threatened demolition of the pucca buildings and structures housing their shops and business premises. According to them the threat of demolition of those buildings and structures was real and imminent inasmuch as the demolition squad of the State Government was knocking at their doors and some of the neighboring structures were, in fact, already demolished. The threat faced by the petitioners was real and it was by no means fanciful would be evident from the order, dated 7.12.1995 recorded in CWJC No. 10476/1995, one of the cases in this batch. That order records the highly improper tactic used to coerce some of the petitioners to vacate the premises in their occupation even after the matter had come before this court and an interim order was passed in that case. The order also takes note of the attempts made to scare away the affected parties even from approaching the court. Later, when on notice being issued the State appeared, it did not care to deny before this court that it intended to resume possession of the disputed land, if need be by use of force. According to the State Government, over the years great congestion had developed in the area and traffic bottle-necks were created which affected the flow of traffic on the roads in that area. The State Government had, therefore, prepared a plan for the development of the entire area on a very big scale. This required the demolition of the existing structures after getting the present occupants evicted from there. It was further stated that the occupants of those buildings including the petitioners in these cases, were in unauthorised occupation and were, therefore, liable to be evicted any way. And, therefore, the State Government proposed to resume possession of those buildings/structures and the lands over which those were constructed after evicting the occupants of those buildings.

5. Though the manner in which the State Government had proceeded to act in this matter appeared to be quite high handed and unreasonable, having regard to the fact that the State Government professed to be pursuing a development scheme, this court in the larger interest of the general public made a most sincere and earnest effort to help the parties to come to a reasonable settlement. The State Government was asked to produce the development scheme in concrete terms which should also have provisions for the rehabilitation of the persons going to be affected by their eviction and demolition of the structures housing their shops and business premises. Further, with a view to facilitate the matter, the Patna Regional Development Authority and the HUDCO, the agencies, through which the development scheme could be materialised were also allowed to be added as party respondents to this case. From the order sheet of CWJC No. 10476 of 1995 it is evident that at the pre admission stage itself a serious effort was made by me to bring about an reasonable settlement between the parties. The exercise was spread over a period of more than a year and a half as will be evident from the orders passed from 12.12.1995 to 20.8.1997. Finally this court was convinced that no reasonable and mutually acceptable settlement was

possible as the State Government was dragging its feet over the matter, and then this batch of writ petitions was admitted for hearing by order, dated 20.8.1997 making the following observation:

It is no longer possible to allow this case to linger on in the vague hope that the State Government will evolve some scheme and try to arrive at some acceptable settlement with the petitioners. I, therefore, now propose to hear and dispose of this batch of cases on merits.

6. From the order sheet it appears that even after the cases were admitted for hearing, this court did not give up its attempt to help the parties to come to a settlement on the basis of some satisfactory scheme to be prepared by the State Government. It appears that besides me two other Hon"ble Judges made further endeavors in that direction but their efforts also met with the same fate and on 14.5.1999 the Hon"ble Mr. Justice N. Pandey recorded the following order:

Unfortunately, the Government appears not interested in the matter. Therefore, no useful purpose would serve in keeping the matter pending. Therefore, this case shall now appear on 24.6.99 for hearing so that the matter can be heard afresh and disposed of. But the case need not be considered as tied up.

7. Thereafter these cases were listed before the Hon"ble Mr. Justice A.K. Ganguly who expressed the view that it would be in the fitness of things that this matter be heard by me as I had dealt with this matter at the pre admission stage. Pursuant to the view expressed by Ganguly, J. these cases were listed for hearing before me on the basis of the order passed by the Hon"ble the Chief Justice on the administrative side.

8. In the aforesaid facts and circumstances when this batch of cases came up for hearing on merits, this court was at a loss to understand what submissions might be advanced to support a course of action divorced from law and based on brute force. But Mr. A.A.G. III appearing for the State wished to make submissions justifying the intended action of the State Government. He was accordingly heard at length. But before proceeding to record the submissions made by Mr. AAG III and before examining their validity it would be appropriate to take note of some basic facts which are either admitted or in any event are undeniable.

9. It may be noted at the outset that the disputed buildings which are sought to be demolished in order to have their occupants evicted are no temporary, transitory or make shift structures. Those are pucca buildings constructed for the most part, about half a century ago and are spread over a large area around three roads. One of the three roads is commonly known as the Station Road. It runs from east to west, almost in a straight line, from the railway station traffic round about on its eastern end to the G.P.O. traffic round about at the western end. The length of this road would be over a kilometer. Pucca buildings constructed on either side of the road are some of the buildings, forming the subject matter of this dispute. The second road runs parallel to the Station Road towards its south. It is somewhat narrower in width than the Station Road but

has the same length running from Mahavir Asthan on the east to Mithapur railway crossing on the west. Pucca buildings constructed on either side of this road are also the subject matter of this dispute. The third road which may be described as off Station Road begins from the eastern end of the Station Road and runs diagonally before opening on the Budh Marg. Pucca buildings and stalls also existed on either side of this road. According to the petitioners some of the pucca structures on the northern side of this road were demolished before the petitioners could approach this court, threatened with demolition of their respective buildings.

10. Another aspect of the matter to be borne in mind is that, keeping aside for the moment, the nature of occupation, it is an undeniable fact that almost all the petitioners are in occupation of their respective premises for long years and in some cases for more than one generation. It is not the case of any one that the petitioners came in occupation of the respective premises yesterday or shortly before the filing of these writ petitions.

11. In these facts and circumstances the State Government claimed a right to evict the petitioners and other occupants of the buildings in question without any decree of a court or an order passed by a statutory authority but by use of executive force. It would be appropriate here to briefly note the procedure followed by the State Government for having the buildings demolished and vacated of their occupants. It is an admitted position that no legal proceeding of any kind was ever instituted in respect of even a single occupant of those buildings before any court of law or an authority under any Act. It is also not denied that no notice in writing was given to any of the occupants, giving him an opportunity to show cause why he should not be evicted from the premises under his occupation. Not even an order was passed by the Collector, Patna determining the lease hold rights in the Sands on which the disputed buildings are standing. But the State Government simply proceeded by having announcements made on public address system and some general notices issued in news papers asking the occupants of the New Market Area to vacate the premises in their respective occupation within the specified time (running not more than few days). The public announcements were backed up by sending demolition squads, accompanied with police force, to carry out the eviction of the occupants, if so required by demolishing the buildings.

12. Mr. Ganga Prasad Roy, learned AAG III now seeks to justify the procedure adopted by the State Government. Mr. Roy submitted that the State Government had made a scheme for development of the entire area and this, coupled with the fact that the petitioners were in "unauthorised occupation" of their respective premises gave the State Government the right to throw them out by the use of physical force. Mr. Roy elaborated his submissions by reading out before me the counter affidavit affirmed by the Commissioner and Secretary, Urban Development, Government of Bihar and filed on behalf of respondent no. 1, the State of Bihar. The counter affidavit dwells on the issue of the manifold problems

arising due, to congestion in the area of New Market. It is stated that over the years there has been a large increase in the traffic passing through that area and the roads there were proving to be inadequate for the increased volume of traffic. It is further stated that the State Government had made an ambitious scheme for the development of that area along with its adjoining areas. The development scheme included construction of shopping plazas, recreation spots, parking area and many other social amenities and facilities. It was also stated that the development scheme also took into consideration the question of rehabilitation of the persons who might be displaced as the result of the demolition of the existing buildings.

13. At this stage, I would like to note that this counter affidavit was filed in this court on 12.12.1995 and it was the statements made in this counter affidavit that prompted the court to make an endeavour to encourage the parties to come to a settlement so that the development scheme of the State Government might not be frustrated and it might be translated into reality. Unfortunately all efforts to bring about an amicable settlement between the parties came to naught as noted hereinabove in this judgment.

14. The other reason assigned to justify the action of the State Government was that the petitioners and other occupants of the disputed buildings and structures were in "unauthorised occupation". In this regard, it was stated that the entire area of land over which the disputed buildings were constructed was given by the State Government to the Patna Administration Committee, (P.A.C. for short) the predecessor of the present Patna Municipal Corporation (P.M.C. for short) on lease for a period of fifty years through several lease deeds between the years 1925 to 1941. One such lease deed is enclosed as Annexure "A" to the counter affidavit. This lease deed is dated 8.12.1934 and it is in respect of 1,25,190 sq.ft. of land described in the schedule to the deed. The land was given on lease to the PAC, "for the sub-lessee thereof to tenants for the construction of shops and markets". Clause 1 of the lease said that the lease was for a period of one year with an option for renewal for the same period. Clause 2 of the lease made it possible for the lessee, the PAC to give small parcels of land on sub-lease (for a term not exceeding the term of the main lease, i.e. 50 years) to tenants for construction of markets, shops etc. Clause 7 of the lease empowered the Government to resume possession of the land if it was not used or ceased to be used for the purpose for which the lease was granted. Clause 8 prohibited the construction of any building unless duly authorised by the Government in the Public Works Department and previous approval of the Government to building plan was obtained in writing. Clause 13 provided that the Government could by notice require the lessee or the sub lessee to demolish a building constructed in violation of the terms of the lease. Clause 14 provided that the plans of all buildings should be counter signed by the Superintending Engineer, Public Health Circle before submission to the Government for approval. Clauses 20 and 21 of the lease, to which the attention of the court was specially drawn were as follows:

20. That in case of breach or non-observance of any of the terms and conditions of this lease whether by the lessee or by any sub-lessee, the Collector of Patna may declare that the lessor has determined and on such declaration all the sub-leases granted by the lessee shall become annulled and void forthwith. An order of the Collector of Patna declaring that there has been such a breach or non-observance shall be final and conclusive proof of such a breach or non-observance and on the expiry of one month from the date of communication of an order (Sic-order?) declaring that the lease has determined to the lessee and the sub-lessee, if any the Collector of Patna or any office or person appointed by Government shall be entitled to take possession of the land leased and all buildings and structures erected thereon whether by the lessee or by any sub-lessee.

21. That should the land leased or any portion thereof be at any time required by the Government of Bihar and Orissa for any purpose declared by Government to be a public purpose, the local Government may resume it and on giving three months notice in writing may through any officer or person authorised in that behalf, re-enter and take possession of the said land or portion thereof and any buildings erected thereon whether by lessee or by any sub-lessee. While exercising their power of resumption under this clause, Government shall have the power to annul any sub-lease and by giving three months notice of the same to the sub-lessee, to take possession of the land and any building and structure erected thereon.

15. As agreed in the lease between the Government and the P.A.C. and in furtherance of the object of that lease, the P.A.C., in its turn, leased out small parcels of land to a number of sub lessees under a sub-lease a standard copy whereof is at Annexure "B" to the counter affidavit. It is significant to note that the sub lease had a separate set of terms and conditions of course subject to the terms and conditions of the main lease. It is further important to note that the sub lease between the P.A.C. and the individual tenants also had a detailed set of specifications for buildings shop by private persons on the leased out land in the New Market Area, Patna. The specifications regarding the design and the nature of construction were expressly made part of the terms and conditions of the lease. As those specifications were part of a standard lease deed, it may not be difficult to assume that the specifications for the buildings were in accordance with the terms and conditions of the main lease and had the due approval of the State Government. At least, there is nothing to indicate, and in fact it is not even pleaded on behalf of the State Government that those specifications were in derogation of the terms and conditions of the main lease and were laid down without the approval of the State Government.

16. The plea of the State Government that the petitioners and the other occupants of the New Market buildings are in unauthorised occupation is made first on the ground that the period of fifty years as stipulated in the main lease was over and the lease was not renewed. Secondly, it is stated in the counter

affidavit that pucca constructions were made in violation of the terms and conditions of the lease and transfers of the leased out premises were made in violation of the terms and conditions of the lease.

17. Leaving aside for the moment, the issue of the period of the lease, the other ground alleging violation of the terms of lease by construction of pucca buildings and by making further transfers) of the leased out premises, prima facie appears to be without substance. It is seen above that both in the main lease and the sub lease specific provisions were made both for construction of pucca building for shops and markets and for making further transfer(s) of the leased out premises. In this regard clause 16 of the sub lease between the P.A.C. and an individual tenant provided as follows:

That except with the previous consents in writing of the Chairman, Patna Administration Committee the lessee shall not sell, mortgage, transfer, assign, sub-let, part with the possession of the whole or any part of the said land or the whole or any part of the said building, for the time being erected thereon.

18. It is, thus, evident that subject to the previous consent in writing of the Chairman, P.A.C. the lessee from the PAC had the right to further transfer the leased out land or the building constructed thereon.

19. From a bare perusal of the counter affidavit and the submissions made by Mr. Ganga Prasad Roy, learned AAG III, it appears that on the basis of some highly generalised and vague statements, the State Government wishes to paint all the occupants of the New Market buildings (whose number may run into thousands) by the same brush. An attempt is made to present all the occupants of the New Market buildings as one homogenous group and without any regard to any possible variations in the case of individuals it is said that all the occupants are unauthorised and, therefore, all of them are liable to be thrown out of their respective premises by force.

20. What I find particularly disquieting about the stand of the State Government is the tendency to deal with an issue of this kind in such a large group and in this way to try to submerge the variations of individual cases in the collective. Having labelled all the occupants (even without ascertaining their number) of the New Market buildings as unauthorised the executive does not seem to be at all bothered about the variations of individual cases and the possibility of infringement of the rights of an individual.

21. This court of course cannot countenance such an approach. And the facts and circumstances of the case, as stated on behalf of the petitioners, would immediately expose the baselessness of the assumptions made by the State Government and the pitfalls and dangers involved in the course adopted by it.

22. According to the petitioners on getting the land on lease from the State Government, the P.A.C. dealt with the land in two ways. A very large area of the land obtained from the Government was leased out in small parcels to individuals

for construction of shops and markets in accordance with the plan specified in the deed executed by the PAC (the sublease). On a smaller portion of the leased out land, however, the P.A.C. made its own construction of a market and rented shops to individual tenants.

23. On a perusal of the different writ petitions in this batch it appears that the claims of the different petitioners regarding the nature of their occupation of the respective premises can be classified into different categories. The first category is of persons who are lessees directly under the P.A.C., which later became the P.M.C. In the next category are persons who are tenants in the shops constructed by the P.A.C. and to-day have a direct relationship of landlord and tenant with the P.M.C. In the third category are persons who are tenants of the lessees under the P.A.C. and in the fourth category are transferees from the lessees under the P.A.C. In respect of the first two categories I fail to see how their occupation can be said to be unauthorised simply because the period of the main lease is over and in respect of the last two categories it may be recalled that the tenancy or the transfer would be quite valid if it was on the basis of a prior consent in writing from the Chairman, P.A.C. and in each case, therefore, it will have to be examined whether the tenancy was created or transfer was made after obtaining the consent of the P.A.C. If the tenancy was created or transfer was made with the consent of the P.A.C. then the same can hardly be said to be in violation of the terms of the lease.

24. It may be noted here that out of the large number of petitioners in CWJC No. 10476/1995, petitioners 2, 7 and 8 belong to the first category, i.e. they are the lessees under the P.A.C.; Petitioners 3 to 6 are in the third category and petitioners 1 and 9 are in the fourth category. Besides the petitioners in that case, a large number of persons have filed an intervention petition to be added as petitioners and to be allowed the same relief. Among the proposed interveners those at serial nos. 2, 3, 5, 8, 10, 15 and 18 are tenants of the lessees under the P.A.C. and, thus, fall in the third category; proposed interveners 1, 4, 7 and 17 are transferees from the lessees under the PAC and, thus, they fall in the fourth category and the intervenors 6, 7, 12, 13, 14 and 16 fall in the second category being tenants directly under the Patna Municipal Corporation.

25. Similarly in CWJC No. 10532/1995 all the thirty two petitioners are directly the tenants of the Patna Municipal Corporation and fall in the second category.

26. It may further be noted that in this batch of cases there are also writ petitions the petitioners in which claim that they have no concern with the lands covered by the lease executed by the State Government in favour of the PAC. One such case is CWJC No. 10699/1995. According to the petitioner in this case he is directly a lessee under the Public Works Department of the Government; that he got a piece of land through a deed of lease directly executed by the Government. The lease was for a period of 45 years and it expired on 16.1.1991. There was a provision of renewal and the right for renewal was duly exercised on 18.12.1990 and the renewal of the lease was under process. The petitioner of

this case makes the complaint that the building constructed by him on his aforesaid lease-hold land was also under threat of demolition along with the other buildings in the New Market Area.

27. Similarly, according to the petitioners in CWJC No. 11175/1995 the land under their occupation was never a Government land; it was recorded in the survey records of right as "Abadi Municipality". This piece of land was not covered by the lease executed by the State Government in favour of the PAC.

28. There is also one case being CWJC No. 10923/1995 in which, according to the case of the petitioners, the building was constructed by the PAC and the petitioners in that case were directly tenants under the Patna Municipal Corporation, that is to say, they fall in category 2 as described above. The petitioners of that case were threatened with eviction earlier also and the matter had gone to the Supreme Court where it was decided in favour of the petitioners by a brief order, dated 12.10.1992 which is as follows:

We have heard the counsel for both the parties. We are of the opinion that in the circumstances of the case the High Court was in error in quashing the decision of the Corporation to continue the petitioner in possession as tenants in the premises. The property in question had been originally leased out to Abdul Aziz. After Abdul Aziz died his legal representatives were collecting the rent from the petitioners. Subsequently the rents have been paid by the petitioners directly to the Corporation also. Having regard to the circumstances that the petitioners had been in possession of the properties as tenants for a considerable length of time, the Corporation decided to continue the petitioners in possession in consonance with the policy decision of the Government not to disturb the tenancy of persons who are in possession. We see no irregularity in this procedure. We, therefore, set aside the order of the High Court and allow the appeal. There will be no order as to costs.

29. Before proceeding further I would like to make it quite clear that the different claims of the petitioners are noticed here not with the view to examine or make any pronouncement on the validity of those claims. The purpose was simply to show that all the occupants of the New Market buildings are far from being a homogenous group and it was necessary to examine the claim/defence of each of the occupant before his occupation of the premises could be branded as unauthorised.

30. Now coming back to the case of the State Government, it may be recalled that according to the State Government the fact that it had made a scheme for the development of the area coupled with the fact that the petitioners and the occupants of the buildings were in "unauthorised occupation" of the buildings was sufficient to give it a right to use physical force for their eviction.

31. I am not aware of any provision of law or any decision of a court to support such a premise.

32. Mr. AAG III tried to support his submission on the basis of certain decisions of this court and the Supreme Court. He first relied upon a bench decision of this court in Srikrishnapuri Boring Road Vyapari Sangh and Another Vs. State of Bihar and Others . I do not see any application of that decision to the facts of this case. In that case a loose organisation of shop keepers, traders and businessmen who were occupying, as tenants, a number of buildings on the Boring Road, Boring Canal Road and S.K. Puri came to the court challenging the action of the Patna Regional Dev. Authority in demolishing/proposing to demolish parts of the tenanted buildings on the ground that those were constructed without any sanctioned plan or in material deviation from the sanctioned plan and further on the ground that their demolition was required in terms of the draft master plan which provided for a road 90 in width in front of the buildings in question. It is highly significant to note here that the action of the Authority in demolishing/proposing to demolish portions of those buildings was not objected to by the owners of those buildings. None of the house owner raised any objection against the demolition of parts of their buildings. In the absence of any objection being raised by the house owners, the tenants in occupation of those buildings failed to get any protection and this court dismissed the writ petition holding that though it was filed in a representative capacity on behalf of the traders, shop keepers etc., it could not be regarded as a public interest litigation. It was further observed that as ail the structures were unauthorised and were raised without a sanctioned plan, this court did not feel persuaded to exercise Its writ jurisdiction for protecting such illegal structures. The challenge of the petitioners in that case appears to have failed mainly because they were tenants and it was held that they had no right whatsoever under the law and notwithstanding their tenancy right it was not open to them to object to the demolition of the buildings in question on the ground that those were unauthorised structures. The challenge to the Authority"s action on the ground of non-issuance of any notice was also rejected holding that section 54 of the Regional Development Authorities Act provided for a notice only to the owners and builders of the houses and having regard to the nature of offending action a mere tenant could have no say in the matter.

33. As I said earlier this decision has absolutely no application to the facts of this case. In S.K. Puri Vyapari Sangh, the Patna Regional Dev. Authority being a statutory body was acting in the discharge of its statutory responsibility in terms of Section 54 of the Regional Development Authorities Act; in the case in hand, the State Government is not acting under any law but is simply trying to use its executive force to realise its object. In S.K. Puri Vyapari Sangh it was not a case where the P.R.D.A. was trying to take recovery of possession after evicting the occupants of the buildings, proposed to be demolished; in the case in hand the State Government, asserting that it has superior title in the lands in question, is forcing its way to take recovery of possession of the buildings and the lands after having their present occupants ejected forcibly. In S.K. Puri Vyapari Sangh it was an admitted position, and the court proceeded on that basis that the buildings

were constructed in an unauthorised manner, the constructions being either without a sanctioned plan or in material deviation from the sanctioned plan; in the case in hand the petitioners stoutly deny that they are in unauthorised occupation of the premises in question and on the basis of the materials on record, it is not possible for a writ court to arrive at such a finding. Moreover, there is a world of difference between calling a building unauthorised for being constructed in violation of some statutory provisions of an Act and holding the possession of a person to be unauthorised over a piece of land or building. In the former case it is simply to be seen whether the building was constructed on the basis of a sanctioned plan. In the latter case, the conflicting rights and interests of the parties may have to be gone into on the basis of large sets of evidence.

34. Mr. AAG IV (Sic) next relied upon a Supreme Court decision in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, . That case related to pavement dwellers who were found to be in unauthorised occupation of foot path of Khariyal road in Ahmadabad which is a main road. They had constructed huts on the pavements. The Supreme Court decision in Ahmadabad Municipal Corporation has no application to the facts of this case in which the petitioners are occupying pucca buildings constructed over leased out lands on the basis of leases made half a century ago.

35. Mr. Roy also relied upon another decision of the Supreme Court in Chameli Singh and others etc. Vs. State of U.P. and another, . I see absolutely no application of this decision to the facts of the case in hand.

36. Mr. Roy also questioned the very maintainability of the writ petitions and referred to the relief claimed in CWJC No. 10476/1995 which is as follows:

That this is an application for an appropriate writ/direction on the respondents to forebear from demolishing the structures which are shops and business premises of the petitioners situate in New Market, R.S. Kotwali in the district of Patna and for such other writ or order which may be appropriate to grant relief to the petitioners against demolition and forceful eviction of the petitioners from the shop and business premises in the above mentioned area.

37. I am unable to appreciate any objection to the maintainability of these writ petitions. It is by now well settled that a citizen is entitled to invoke the writ jurisdiction of this court against a threatened invasion of his rights and as noted above, the threat of demolition faced by the petitioners was very real and imminent and it was also confirmed by the State Government itself which at no stage in this proceeding, spread over five years, denied its intention to forcibly eject the petitioners from their respective premises. I see no merit in the objection raised on behalf of the State regarding the maintainability of these writ petitions.

38. Now looking at the matter from the other point of view, the legal position is clear that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be

dispossessed by the owner of the property except by recourse to law. This legal position is clearly borne out from a long series of decisions. In *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , the Supreme court observed and held as follows in para 15 of the judgment:

15. Sri Sorabjee submitted that great hardship and injustice would be occasioned to the respondents if the State Government, on the self-assumed and self-assessed validity of its own action of cancellation of the lease, attempts at and succeeds in, a resumption of possession extra judicially by physical force. Sri Sorabjee referred to the notice dated 19.11.1985 in which the Government according to Sri Sorabjee, had left no-one in doubt as to its intentions of resorting to an extra judicial resumption of possession. Sri Sorabjee referred to paras 3.10 and 4 of the order dated 19.11.1985.

A lessor, with the best of title, has no right to resume possession extra judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression "re-entry" in the lease deed does not authorise extra judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a "legal pedigree". In *Bishan Das and Others Vs. The State of Punjab and Others*, , this court said (at pp. 1574 and 1575 of AIR):

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 extrajudicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly prohibited from taking possession otherwise than in due course of law.

39. In *Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao*, it was observed and held in para 8 of the judgment as follows:

8. Mr. Tarkunde, learned counsel for defendant no. 3, the appellant herein, rightly did not go into the appreciation of the evidence either by the trial court or the

High Court or the factual conclusions drawn by them. It was, however, strongly urged by him that the period of licence had expired long back and the plaintiff was not entitled to the renewal of licence. It was submitted by him that in view of the licence having come to an end, the plaintiff has no right to remain incharge of the business or the premises where it was conducted and all that the plaintiff could ask for was damages for unlawful dispossession even on the footing of facts as found by the High Court. We find ourselves, totally unable to accpet the submission of Mr. Tarkunde. It is a well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a division bench of this court in *Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others*, . This court in that judgment cited with approval the well known passage from the leading Privy Council case of AIR 1924 144 (Privy Council) where it has been observed (p. 208) (of SCR); (at p 622 of AIR) :

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

40. In *Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others*, it was observed and held as follows in para 6 of the judgment:

6. It would thus be clear that without any decree or order of eviction of the appellant from the demised premises, he has been unlawfully dispossessed from the premises without any due process of law. The question, therefore, is whether he should be allowed to remain in possession till his application under Order 21, Rules 98 and 99 is adjudicated upon and an order made. Though the learned counsel for the first respondent and also for the 3rd respondent, who is one of the transferees from the sixth respondent, sought to contend that the appellant has no right to remain in possession after the lessee, Messrs. India Foils Limited had admitted by a resolution that the appellant has no right to remain in possession, we are not impressed with the arguments. At this stage, we are only concerned with his admitted possession of the demised premises. What rights would flow from a contract between him and his employer is a matter to be adjudicated in his application filed under Order 21, Rules 98 and 99, C.P.C. At this stage, it is premature to go into and record any finding in that behalf. The learned counsel for the first respondent also repeatedly sought to bring to our notice that on account of the orders of the Court Officer passed by the High Court the maintenance cost has been mounting up due to the delay in disposal of the proceedings in various courts. Even with regard to that, we are not impressed with the same. Since the letter of the law should strictly be adhered to, we find that high-handed action taken by the respondents no. 1, 3 and 6 in having the appellant dispossessed without due process of law, cannot be over looked nor condoned. The court cannot blink at their unlawful conduct to dispossess the appellant from demised property and would say that the status

quo be maintained. If the court gives acceptance to such high handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary.

41. Following the Supreme Court decisions on the point, this court has also consistently taken the same view. See the cases of (i) The Gait Public Library & Institute vs. State of Bihar and others, 1995 (1) PLJR 585, (ii) Deba Jyoti Dutta and others vs. State of Bihar and others, 1988 PLJR 621, (iii) Hindusthan Petroleum Corporation Ltd. Vs. The State of Bihar and Others and (iv) Smt. Manju Devi and another vs. State of Bihar and others, 1999 (2) PLJR 641.

42. For the reasons discussed above, this court has absolutely no hesitation in holding that the course of action proposed by the State Government in having the disputed buildings vacated from the petitioners and their other occupants is wholly misconceived and completely unsustainable in the eyes of law. This court, therefore, is constrained to intervene in this matter for upholding the rights of the petitioners and other similarly situated persons. A direction is accordingly issued restraining the State Government and all the officials and agencies acting under it from trying to forcibly eject the petitioners from their respective premises or to act in a manner so as to disturb their possession of the respective premises till such time the petitioners are directed to be evicted from their respective premises in due course of law.

43. In order to avoid any confusion on the issue, it is made expressly clear that this judgment or any observations or remarks made hereinabove are not intended to express any opinion on the merits of the parties claim and their respective rights in the disputed properties and it will be open to the State Government, if it is so advised, to seek the petitioners' eviction following the due course of law. In the result, all these writ petitions are allowed with the observations and directions made hereinabove. As this court is of the opinion that it was a wholly unnecessary and avoidable litigation foisted upon the petitioners as well as upon this court, the State Government must pay costs. A consolidated cost for all these writ petitions is quantified at Rs. 15,000/-. A receipt showing payment of cost to the Bihar State Legal Services Authority must be filed within one month from today.