(1998) 11 DEL CK 0017

In the Delhi High Court

Case No : Criminal W.P. NO. 779/94

Vijay Khanna and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Citation : (1999) 1 AD 277 : (1999) CriLJ 1275 : (1999) 78 DLT 619 : (1999) RLR 117

Hon'ble Judges : Y.K. Sabharwal, J;Kripa Shankar Gupta, J

Bench : Division Bench

Advocate : Sh. Dhruv Mehta and Ms. Shobha, for the Appellant; Sh. R.K. Anand, Sh. S.S. Gandhi, Sh. Rajiv Dutta, Sh. Uday Kumar, Sh. Vivek Srivastava, Sh. Atul Batra, Sh. Satish Aggarwal, Sh. Rajesh Kumar and Sh. Sushil Dutt Salwan, for the Respondent

Judgement

K.S. Gupta, J.—Petitioner No. 1 is the husband of petitioner No. 2. They filed this petition under Article 226 of the Constitution initially in October 1994 seeking writ of mandamus for directing the Union of India, respondent No. 1 and Lt. Governor of Delhi, respondent No. 2 to institute an independent inquiry into the actions taken by the other respondents in collusion with one another against the petitioners and their family members. Direction was further sought to the respondents particularly Nos. 16 & 17 to restore possession of house No. E-224, Sainik Farm, New Delhi, to the petitioners. On March 28, 1995 Shri Vipin Sanghi, Advocate appearing for the petitioners made statement that the petitioners do not press the first part of the prayer as made in the writ petition. By the judgment dated April 12, 1995 the petition was dismissed in liming by a Division Bench of this Court. Feeling aggrieved, petitioners filed Crl. Appeal No. 629/97 (arising out of SLP (Crl.) No. 1327/96) in the Supreme Court which was disposed of by the order dated July 15, 1997 observing as under:-

"On the pleadings of the parties and the documents adduced to support their respective claims, the High Court instead of going into the question whether the appellants were in peaceable possession wherefrom they were disturbed, went on to pronounce against them, doubting their title and holding them disentitle to the property because the Sainik Farms Colony was supposedly unlawful and the land under the colony had since been acquired by the State under the provisions of Land Acquisition Act. It transpires that the view of the High Court that such land stood acquired by the State was factually wrong. On the other hand determining or pronouncing on the question of title in these proceedings was totally uncalled for. What the High Court was required to do was to go into the question whether the appellants were in peaceable possession and had been disturbed in the manner alleged and in the light of the judgment of this court in Manohar Lal Vs. State of Punjab AIR 1971 PLJ 338, grant appropriate relief to the appellants, If The inquiry as undertaken by the High Court having gone off the track would warrant a remand. We would not on our part like to usurp that function of the High Court which it was required to perform having admitted the writ petition and calling for responses from the respondents. We, Therefore, upset the impugned order of the High Court and remand the matter back to its file for reconsideration in the light of the aforesaid observations as well as in accordance with law."

2. After remand on the application filed by the petitioners for impleadment and amendment of cause title the name of deceased N.K. Jain, respondent No. 12, was deleted from the array of the parties and M.S. Rathi, Inspector of Police, J.P. Meena, Inspector of Police, Raj Kumar, Inspector of Police, Anil Soni and Mrs. Madhu Soni were imp leaded as respondent 17 to 21 respectively.

3. In the amended writ petition it is, inter alia, alleged that petitioner No. 2 purchased plot of land bearing No. E-224, measuring 500 sq-yards, in Sainik Farm in 1991 and thereafter she got constructed a house consisting of ground and first floors thereon. The total built up area of the house is about 8500 sq. yards and the total cost of construction was in excess of Rs. 30 lacs. Rajiv Gupta, respondent No. 13, a neighbour of the petitioners introduced petitioners sometime in March 1993 to Pritpal Singh Chauhan @ Ganju Chauhan, respondent No. 7, Balbir Singh Chauhan @ Bibba Chauhan, respondent No. 8, Ranjit Singh Chauhan @ Pointy Chauhan, respondent No. 9, all brothers (hereinafter referred to as ''Chauhan Brothers'') and owners of Chauhan Jewellers having their showrooms at Karol Bagh and South Extension Part-II, to help them identify a business partner overseas since petitioner No. 1 had vast contacts overseas which he had developed over a period of 18 years. Petitioner No. 1 introduced Abdul Razak, an Iraqi national based in Jordan with whom he had business dealings in the past.

4. It appears that in relation to the business transacted between said Abdul Razak and Chauhan Brothers, former delivered a cheque for US $ 2,50,000 in the name of respondent No. 7. This cheque was drawn on Citi Bank, Aman, Jordan. However, on account of certain disputes between Abdul Razak and Chauhan Brothers the latter were unable to encash the above cheque. It is stated that

from June 1993 onwards Chauhan Brothers started visiting petitioner No. 1 and desired that he should make payment to them of US $ 2,50,000 in Indian currency in cash since the cheque issued by said Abdul Razak could not be encased by them. They also informed petitioner No. 1 that the said money in fact belongs to Additional Commissioner of Police (North), P.R.S. Brar, respondent No. 4 who was personal friend of respondent No. 7. Petitioner No. 1 declined the demand as he had nothing to do with the transactions between Chauhan Brothers and Abdul Razak. Petitioner No. 1 was told that neither Chauhan Brothers nor respondent No. 4 would spare him in case he did not cough out the said money. It is alleged that on August 11, 1993 D.P. Singh, the then Chowki Incharge, Police Post Sainik Farm, visited the petitioners'' house at E-224, Sainik Farm, at 11 AM and again at 7 PM Along with two constables to convey to petitioner No. 2 that the petitioners should pay the said amount to Chauhan Brothers. Raghbir Singh, ACP, Greater Kailash, New Delhi, Along with D.P. Singh again visited the house of the petitioners on August 12, 1993 and threatened petitioner No. 2 with dire consequences in case the demand of Chauhan Brothers was not met. Petitioner No. 1 was out of India on a business trip at that time. Raghubir Singh, ACP, S.K. Rathi, SHO, P.S. Ambedkar Nagar and D.P. Singh again visited the house of the petitioners on August 17, 1993 accompanied by nine constables and the purpose of their visit was to pressurise the petitioners into acceding to the demand of Chauhan Brothers and respondent No. 4 to pay the said money. On August 18, 1993 a false case FIR No. 324/93 for electricity theft was registered against petitioner No. 1. On August 19, 1993 Raghubir Singh, ACP, visited the house of the petitioners three times and issued threat that in case they failed to pay the said amount to Chauhan Brothers and respondent No. 4 they would face dire consequences. Again on August 22, 1993 D.P. Singh came to the petitioners'' house and issued similar threat to petitioner No. 2. Fed up with the illegal visits and threats held out by the police authorities the petitioners filed Criminal Writ Petition No. 673/93 on September 13, 1993 (Annexure 3) against the said police officials and notice thereof was issued to them. In response to said Crl. Writ Petition which came to be withdrawn by the petitioners counsel stating no instructions from the client, the respondents did not specifically denied their visits to the house of the petitioners but sought to take the cover of the F.I.Rs alleging theft of electricity.

5. It is further alleged that a notice dated January 14, 1994 was served upon the petitioners in connection with inquiry into the complaint made by M/s. Chauhan Jewellers. In terms of the notice petitioners were required to attend the office of the Inspector, Crime Branch, Section V, 5th Floor, Police Headquarters, New Delhi, on January 17, 1994 at 2 PM. Subsequently, on February 23, 1994 an F.I.R. bearing No. 78/94 under Sections 120-B & 420 IPC was registered at P.S. Karol Bagh on the basis of the said complaint. It was alleged that on June 26, 1993 petitioners visited the showroom of Chauhan Brothers at Karol Bagh and purchased jewellery worth Rs. 3,68,825/-. Petitioner No. 1, as director of M/s. R.V. Consultants (Pvt.) Ltd. issued two cheques aggregating Rs. 2,50,000/-

drawn on UCO Bank, ASIAD Village Branch and on presentation the cheques were dishonoured. It is stated that the petitioners were desirous of purchasing adjoining vacant plot falling in Khasra No. 456, Village Khirki. Rajiv Gupta, respondent No. 13, a friend of petitioner No. 1 had offered to negotiate with the owner of that plot on behalf of the petitioners. Petitioner No. 1 being in export business remained out of country continuously for long stretches to time. While reposing complete faith in respondent No.13 he delivered sometime in May/June 1992 two blank cheques which did not bear the name of the drawee and the date to enable respondent No. 13 to finalise the transaction for purchase of plot with it s owner. However, the transaction could not be concluded and the two cheques remained with respondent No. 13. It is claimed that two cheques on the basis of which the aforesaid F.I.R. No. 78/94 was lodged by Chauhan Brothers, were procured by them from respondent No. 13. It is emphatically denied that petitioners either visited the showroom of Chauhan Brothers at Karol Bagh or purchased jewellery worth Rs. 3,68,825/- as alleged.

6. In November 1993 one Shunty, Commission Agent of woollen and leather goods operating in Gandhi Nagar who had been dealings with petitioner No. 1 for over one year introduced petitioner No. 1 to R.S. Jindal, respondent No. 10. Respondent No. 10 expressed capability to procure finished goods i.e. woollen garments to meet the export orders of petitioner No. 1 to Russia. Two shipments of woollen garments worth Rs. 7 to 8 lacs were sent by respondent No. 10 to petitioner No. 1 for export to Russia. Respondent No. 10 drew two cheques for Rs. 3,00,000/- and 31,000/- in favor of the petitioners'' company - Viva Exports which were dishonoured on presentation on account of insufficient funds. petitioner No. 1 has now come to know that respondent No. 10 was introduced in a calculated move by Chauhan Brothers to know more about petitioner No. 1 and his family for the purpose of implicating them in false cases. On April 2, 1994 in relation to an export order which the petitioner No. 1 had to fulfill, respondent No. 10 desired that petitioner No. 1 should visit him to meet a socks'' manufacturer who could supply the socks for export to Russia. One K.K. Jain of Kanpur who was staying with petitioner No. 1, also accompanied him to meet respondent No. 10. On reaching respondent No. 10''s office at A-34, Connaught Place around 3 PM the respondent No. 10 introduced petitioner No. 1 to a gentleman as manufacturer of socks. Later on it transpired that person was Prithvi Singh, Inspector Crime Branch, respondent No. 6 and not a manufacturer of socks. Respondent No. 10 suggested that petitioner No. 1 should see the factory where the socks are manufactured. Petitioner No. 1 Along with K.K. Jain left with said Prithvi Singh in a car. Respondent No. 10 followed them in his car. Instead of taking petitioner No. 1 to factory he was taken to the office of the Crime Branch at Adarsh Nagar. Within 20 minutes of petitioner No. 1 reaching there Chauhan Brothers also arrived there. Petitioner No. 1 was then informed that an F.I.R. being No. 196/94 u/s 420/467/471 & 34 IPC dated April 2, 1994 has been registered at the instance of respondent No. 10 against both the petitioners with Police Station Connaught Place. Accusation made against the

petitioners in the F.I.R. was that no December 13, 1993 petitioner No. 2 approached respondent No. 10 with an F.D.R. for about Rs. 6 lakhs in the name of Vinay Kumar claiming to be the son of the petitioners, obtained a loan of Rs. 4 lakhs which he claims to have paid partly by cheque for Rs. 3.90 lakhs and partly in cash of Rs. 10,000/-. Petitioner No. 2 is further alleged to have visited respondent No. 10 on January 28, 1994 with another F.D.R. of about Rs. 6 lakhs in the name of Vinay Kumar and she received Rs, 75,000/- by cheques and Rs. 2,25,000/- in cash. It is stated that cheques in question were not encased by the petitioners nor any amount in cash as claimed was paid by respondent No. 10 to petitioner No. 2. Petitioner No. 1 later on learnt that respondent No. 10 is a share broker operating for Chauhan Brothers and is a family friend of theirs.

7. On April 3, 1994 while petitioner No. 1 was in custody at Adarsh Nagar Crime Branch, Ganju Chauhan, respondent No. 7 armed with a pistol and accompanied by four others visited the house of the petitioners around 8.30 PM and forcibly took away the cheque book of ''Trend Take Enterprises'', a proprietorship concern of petitioner No. 1, of an account in Oriental Bank of Commerce, Saket. At pistol point they obtained signatures of petitioner No. 2 on blank and stamped papers. Report with regard to this incident was lodged by petitioner No. 2 with Police Post Sainik Farm in the early morning on April 4, 1994. It is alleged that respondent No. 7 came to Crime Branch Office at Adarsh Nagar around 10.30 PM and with the aid of the police officials forcibly obtained the signatures of petitioner No. 1 on 16 blank cheques for an amount of Rs. 5 lakhs each from the said cheque book. These 16 cheques worth Rs. 80 lacs were taken for the purposes of extracting from petitioner No. 1 amount equivalent to US $ 2,50,000 payment where of Chauhan Brothers had been pressurising by the petitioners since long. Later on by a telegram ''stop payment'' instructions were issued by petitioner No. 1 to the bank at the earliest possible opportunity while he was in custody.

8. It is further alleged that petitioner No. 1 had been remanded to police custody on April 4, 1994 and his remand period was to come to an end on April 7, 1994. The police authorities and Chauhan Brothers were still working to somehow involve petitioner No. 1 in other false case to prolong his police remand. Accordingly, on April 7, 1994 F.I.R. No. 200/94 was registered at Police Station R.K. Puram under Sections 420/467/471 & 120 IPC at 4.10 PM against petitioner No. 1 on the complaint of V.K. Goel, respondent No. 11. It is claimed in that F.I.R. that petitioner No. 1 was introduced to him by N.K. Jain (respondent No. 12), Chartered Accountant, and on March 2, 1994 petitioner No. 1 gave a bank draft to respondent No. 11 dated February 24, 1993 issued by Chemical Bank, Los Angels, USA, favouring N.K. Gupta payable at Citi Bank, Madras, for US $ 10,000. It is further stated that petitioner No. 1 met respondent No. 11 at Hyat Regency Hotel, New Delhi, on March 2, 1993 and gave Rs. 1,20,000/- in cash and he further gave Rs. 2,40,000/- to said N.K. Jain for petitioner No. 1. Said bank draft was, however, found to be forged and petitioner No. 1 had thus cheated respondent No. 11. Said F.I.R. was used by the Police Authorities to prolong the police remand of petitioner No. 1. Petitioner No. 1 was remanded by

Sh. D.C. Anand, Magistrate, at his residence at 9.45 PM with the direction to the police to produce petitioner No. 1 before Shri V.K. Jain, Magistrate, on April 8, 1994. On being produced before Shri Jain on that date petitioner No. 1 was remanded to police custody up to April 10, 1994. On April 10, 1994 he was sent to judicial custody by the Duty Magistrate.

9. Petitioners have learnt that in the month of April 1994 F.I.R. No. 132/94 under Sections 506/406 IPC was registered at Sadar Thana, Saharan- pur, against Vikas Khanna and petitioner No. 1. Neither petitioner No. 1 for Vikas Khanna ever visited Sharanpur. Further action by Delhi Police on this F.I.R. was stalled by the office of the Lt. Governor in the month of June 1994.

10. It is further stated that on April 14, 1994 Chauhan Brothers and their associates with the active collusion of the Police Authorities took forcible possession of the ground floor of the petitioners'' house at E-224, Sainik Farm. Petitioner No. 1 was under arrest while petitioner No. 2 and Vikas Khanna were on the run due to warrants against them. Later on , petitioners were shocked to learnt that the intruders had forged and fabricated a rent note in respect of the ground floor of the said property in favor of Lal Chand Sharma, respondent No. 15 by petitioner No. 2 dated March 30, 1994 at a monthly rent of Rs. 1600/-.

11. On April 22, 1994 another false F.I.R. bearing No. 138/94 u/s 420/467/471/120B IPC was got registered at Police Station Hazrat Nizammuddin by Chauhan Brothers through B.S. Chhabra, respondent No. 12.

12. It is pleaded that petitioner No. 2 who was arrested on April 25, 1994, was bailed out on May 16, 1994. She visited the house on May 21, 1994 after recovery from shock and trauma and was aghast to see that the entire house No. E-224, Sainik Farm, was occupied by K.N. Bhardwaj, respondent No. 16 and his family members. On inquiry petitioner No. 2 was told by respondent No. 16 that the house was purchased by him under a sale deed dated May 18, 1994.

13. On June 2, 1994 petitioner No. 2 personally met the Lt. Governor and narrated him the whole sequence of events. She also gave to the Lt. Governor a representation dated June 2, 1994. On June 15, 1994 petitioner No. 2 also met Shri Rajesh Pilot, the then Minister of State (Internal Security). She submitted a written note to him. Petitioners further represented to the Home Secretary regarding harassment meted out to them by the police. On the basis of written complaint of petitioner No. 2 case. FIR No. 259/94 was registered and on the representations made by the petitioners to the Lt. Governor as well as to the Ministry of Home Affairs the investigation of the said case was entrusted to CBI who has submitted charge sheet against respondents 7 to 9, 14 to 16 and others.

14. In the reply affidavit filed on behalf of respondents 2, 3, 4, 5, 6, 17, 18 & 19, S. Vasudeva, Dupty Commissioner of Police HQ(II), Delhi has stated that on 21st May, 1994 petitioner No. 2 lodged a complaint at P.P. Sainik Farm alleging that Kedar Nath Bhardwaj/respondent No. 16 has illegally taken possession of the first floor of house No. E-224, Sainik Farm besides removing the household

articles. On the basis of that complaint a cause under Sections 448/380/34 IPC was registered at P.S. Ambedkar Nagar vide FIR No. 259/94, During investigation of the case said Kedar Nath Bhardwaj produced agreement to sell, will, affidavit, special power of attorney and arbitration agreement etc. He also obtained status quo order in respect of the said house on 28th May, 1994 from the Civil Court at Tis Hazari. Petitioners made representations to various authorities including respondents 1 & 2 and the Chief Secretary, Government of NCT of Delhi after examining the complaint made by the petitioners and finding that the allegations have been made against the Additional Commissioner and the other police officials, requested the Home Secretary, Government of India to transfer the investigation of the case to CBI. On receipt of request the CBI registered a case vide RC No. 19(S)/94 on 7th November, 1994 and after completion of investigation chargesheet No. 26/95 dated 4th December, 1995 has been filed in the Court of the concerned Metropolitan Magistrate at New Delhi against Pritpal Singh, Balbir Singh, Rajender Singh, Lal Chand Sharma, Kedar Nath Bhardwaj, Raj Kumar, Om Prakash, Vinod Gogia, Pankaj Malhotra and Smt. Lavely Kalra u/s 120-B read with Sections 420/467/468/471/380/448/384 IPC. In the charge sheet CBI has stated that allegations against SI Raj Kumar, SI J.P. Meena and Inspector M.S. Rathi have not been substantiated. However, Sh. N.K. Goel, Metropolitan Magistrate has taken cognizance against SIs Raj Kumar, J.P. Meena and Inspector M.S. Rathi under Sections 448/380 read with Section 120B IPC and summoned them and the case is pending trial now before Sh. Brijesh Sethi, Metropolitan Magistrate. Case FIR Nos. 196/94 under Sections 420/467/471/34 IPC P.S. Connaught Place, 138/94 under Sections 420/467/471/120-B/34 IPC P.S. Hazrat Nizamuddin, 78/94 under Sections 420/120-B IPC P.S. Karol Bagh are pending investigation against the petitioner, by the CBI. Petitioners are also involved in case FIR Nos. 137/94 under Sections 406/420/468/471/120-B IPC P.S. Lajpat Nagar, 77/93 u/s 379 IPC and 39 Electricity Act P.S. Ambedkar Nagar, 324/93 u/s 379 IPC and 39 Electricity Act P.S. Ambedkar Nagar, 109/94 under Sections 341/324/34 IPC P.S. Inder Puri, 97/97 under Sections 420 IPC P.S. C.R. Park, 388/97 under Sections 420/468/471 IPC P.S. Connaught Place and 79/97 u/ s 380 IPC P.S. Vasant Vihar. It is further stated that P.R. S. Brar, Additional Commissioner of Police, Northern Range (respondent No. 4) was having no control over the Crime branch at the relevant time. Respondents 20 & 21 are presently in occupation of aforesaid house No. E-224.

15. In his reply affidavit Pritpal Singh Chauhan/respondent No. 7 has denied that petitioner No. 1 introduced one Abdul Razak and that he entered into any business transaction with said Abdul Razak or Abdul Razak delivered any cheque to him as alleged. It is further denied that he ever visited or pressurised petitioner No. 1 for payment of any amount for which Abdul Razak had issued any cheque. It is also denied that he in collusion with the other respondents dispossessed the petitioners from house No. E224 or fabricated any rent deed etc. in favor of respondent No. 16 as alleged. It is stated that FIR bearing No. 78/94 u/s 120-B read with Section 420 IPC was lodged by him at P.S. Karol Bagh

on 23rd February, 1994 against the petitioners. Out of the total amount of Rs. 3,68,825/- of the jewellery purchased by the petitioners they paid Rs. 18,825/- in cash and handed over two cheques worth Rs. 2,50,000/- dated 20th June, 1993. They further stated that they will pay Rs. 1,00,000/- to his representative but they failed to make that payment. Respondent No. 7 has emphatically denied that he visited the house of the petitioners on 3rd April, 1994 and forcibly took away any cheque book or obtained the signatures of petitioner No. 2 on blank or stamped papers. He further denied that he visited the Crime branch office at Adarsh Nagar and with the aid of the police personnel forcibly obtained the signatures of petitioner No. 1 on cheques. It is also denied that the persons in occupation of the petitioners'' house were in any way connected with him.

16. Balbir Singh Chauhan/respondent No. 8 and Rajendra Singh Chauhan/ respondent No. 9 have filed separate reply affidavits on the lines similar to that of the reply affidavit filed by respondent No. 7.

17. In his reply affidavit R.S. Jindal/respondent No. 10 has justified the lodging of case FIR No. 196/94 under Sections 420/467/471 IPC dated 2nd April, 1994, P.S. Connaught Place against the petitioners. It is further stated that he has no concern whatsoever with house No. E-224 nor has he ever been in possession thereon.

18. Rajiv Gupta/respondent No. 13 in the reply affidavit has denied that two cheques as alleged by the petitioners were given to him and that he dishonestly passed on those cheques to Chauhan Brothers.

19. Lal Chand Sharma/respondent No. 15 in the reply affidavit has denied that he in any way colluded with the other respondents in dispossessing the petitioners from house No. E-224 as alleged. It is stated that he was taken as a tenant by the petitioners on the ground floor of the said house on a monthly rent of Rs. 1,600/- and a receipt dated 30th March 1994 was issued by petitioner No. 2. It is admitted that he filed suit No. 114/94 against Rajiv Gupta/respondent No. 13 in the Court of Senior Sub Judge, Delhi and that Kedar Nath Bhardwaj/ respondent No. 16 also filed a suit bearing No. 165/94 against him.

20. In his reply affidavit Kedar Nath Bhardwaj/respondent No. 16 has stated that he purchased house No. E-224 from petitioner No. 2 for a consideration of Rs. 5,00,000/- and the requisite documents were duly executed by her in the presence of Notary Public. After payment of entire amount of the sale consideration petitioner No. 2 handed over the peaceful possession of the said house. At the time of the purchase of the house Lal Chand Sharma/respondent No. 15 had been in possession as a tenant. It is further stated that he sold the said house to Madhu Soni & Anil Soni/respondents and executed special power of attorney, general power of attorney, agreement to sell, will, letter of possession etc. in their favor besides handing over possession of the house to them.

21. Anil Soni and Madhu Soni/respondents in their joint reply affidavit have averred that respondent No. 21 purchased house No. E-224 from respondent No.

16 and now they are in peaceful possession thereof. Power to restore possession of the said house vests with the Criminal Court u/s 456 Cr.P.C. and this Court would not exercise power of restoration in exercise of the writ jurisdiction. It is further stated that after purchase they have made considerable improvements in the house. By the order dated 26th October, 1995 Sh. G.P. Mittal, Metropolitan Magistrate has declined to restore the possession of the house in favor of the petitioners and the petitioners have admittedly not resorted to civil remedy seeking possession of the said house.

22. Sh. Dhruv Mehta appearing for petitioners has submitted that as petitioners were illegally dispossessed from house No. E-224, Sainik Farm on 14/26th April, 1994 by respondents 15 & 16 in collusion with other respondents including the police authorities, the possession thereof is liable to be restored to them. Strong reliance has been placed on a decision in Smt. Anju Devi Vs. Commissioner of Police & Ors. 1994 (2) CRIME 691.

23. Sh. Rajiv Dutta for respondents 7 to 9 has contended that the fact whether the petitioners were in possession of the house in question before they were allegedly dispossessed, is a question of fact which cannot be gone into in writ jurisdiction by this Court. As a part of this contention he has also submitted that all the acts complained of are criminal in nature and for redressal thereof the remedy is provided elsewhere.

24. Sh. S.S. Gandhi appearing for respondents 1 to 6 & 17 to 19 has urged that name of P.R.S. Brar/respondent No. 4 neither figures in Criminal Writ Petition No. 673/93 filed by the petitioners earlier nor in the complaint dated 15th June, 1994 made by them to Sh. Rajesh Pilot, the then State Home Minister (Internal Security) (Annexure 27) or the statement of petitioner No. 2 dated 21st May, 1994 on the basis whereof case FIR No. 259/94, P.S. Ambedkar Nagar was registered. According to him, in case FIR No. 259/94 wherein charge sheet has been submitted, CBI has found that allegations against respondents 17 to 19 have not been substantiated nor were they imp leaded as respondents at the time this petition was filed initially. The allegations made in the petition against the police authorities including the said respondents are, Therefore, without any basis.

25. Sh. R.K. Anand, Sr. Advocate appearing for respondents 20 & 21 has submitted that only in rarest cases possession can be restored back in writ jurisdiction and as the dispute in this case is in between the private parties the remedy available to the petitioners was either to have filed suit for possession u/s 6 of the Specific Relief Act or initiated proceedings u/s 145 Cr.P.C. Question of restoration of possession can be considered u/s 456 Cr.P.C. by the Court before whom case FIR No. 259/94 is pending trial. He has further submitted that the conduct of the petitioners is not above board and respondents 20 & 21 who are the bona fide purchasers for valuable consideration of the house in question, cannot be asked to hand over vacant possession thereof to the petitioners.

26. Shri. Satish Aggarwal for respondent No. 16 has contended that the prayer made by the petitioners for restoration of possession for the time being was turned down by the order dated 26th October, 1995 by Sh. G.P. Mittal, Metropolitan Magistrate. Petitioners may again move the Court before whom case FIR No. 259/94 is pending trial for seeking restoration of the possession. According to him, respondent No. 16 now does not have any interest in the house as he has sold it and delivered possession thereof to respondent No. 21.

27. Sh. Atul Batra appearing for respondent No. 13 has opposed the restoration of possession of the house in favor of the petitioners on the grounds similar to that taken on behalf of other sets of private respondents.

28. Needless to repeat that as per the order of the Supreme Court dated 15th July, 1997 this Court has to examine whether the petitioners were in peaceable possession of the house in question and had been disturbed in the manner urged by them. Pursuant to the order dated 28th March, 1995 the petitioner No. 1 filed his affidavit on 5th April, 1995. In paras 3 & 4 of this affidavit it is stated that the land admeasuring 10 bids was falling in khasra No. 456, Khirki, Tehsil Mehrauli was initially owned by Net Ram, Bhim Singh, Tej Ram & Gian Singh and the same was sold by them under a sale deed dated 18th November, 1981 to one Smt. Jaishree. Smt. Jaishree subsequently assigned the said land in favor of Anil Kapoor under a deed dated 30th September, 1988. Anil Kapoor executed agreement to sell dated 11th November, 1991 in respect of the said land in favor of petitioner No. 2 and after receipt of the entire sale consideration she was put in possession of the land by him in part performance of that agreement. Anil Kapoor also executed will and general power of attorney which were duly registered in the office of the Sub Registrar in favor of petitioner No. 2. Along with the affidavit photostat copies of the sale deed dated 18th November, 1981 executed by Net Ram & three others in favor of Smt. Jaishree, assignment deed dated 30th September, 1988 executed by Smt. Jaishree in favor of Anil Kapoor, general power of attorney, agreement to sell, and possession letter, all dated 11th November, 1991 executed by Anil Kapoor in favor of petitioner No. 2, have been filed. Case of the petitioners is that after purchase of the land from Anil Kapoor, house consisting of ground and first floors was got constructed by them. Peaceable possession of the petitioners over said house No. E-224 before they were allegedly dispossessed thus cannot be disputed. Moreover, Lal Chand Sharma/respondent No. 15 claims to have been inducted as a tenant on the ground floor of the aforesaid house by petitioner No. 2. Kedar Nath Bhardwaj/ respondent No. 16 too claims to have been put into possession of the accommodation other than in Lal Chand''s tenancy by petitioner No. 2 on 18th May, 1994.

29. Coming to the alleged dispossession, petitioners allege dispossession from the ground floor portion of the house by respondent No. 15 and others on 14th April, 1994 while from first floor portion by respondent No. 16 and others on 26th April, 1994. In para No. 2 of the petition it is, inter alia, alleged that after

purchase of piece of land, measuring 500 sq. yds., in 1991, petitioner No. 2 got constructed two strayed house thereon having built up area of approximately 8500 sq. ft. and the total cost of construction of house in 1991-92 was in excess of Rs. 30,00,000/-. By way of annexure-1 petitioners have filed Along with the petition copy of the statement made before the Income Tax Authority declaring the cost of construction of the house. In annexure-1, Rs. 28,00,000/- have been shown to have been incurred towards cost of construction besides Rs. 1,40,000/- being purchase price of the land underneath the house. It is a matter of common knowledge that in the year 1994 there had been substantial increase in the prices of the land and building in Delhi. Respondent No. 16 is claimed to have purchased the aforesaid house from petitioner No. 2 on 18th May, 1994 for a consideration of Rs. 5,00,000/-. Ordinarily, one would not sell his property of the value exceeding Rs. 30 lacs for a sum of Rs. 5 lacs.

30. On the basis of the complaint lodged by petitioner No. 2 on 21st May, 1994 case FIR No. 259/94 was registered at P.S. Ambedkar Nagar and the investigation thereof was subsequently made over to CBI. It is not in dispute that CBI on 14th January, 1995 conducted a raid at the residential premises in possession of respondent No. 16 at house No. A-5/67, Sector-16, Rohini and there from it recovered as many as 162 items belonging to the petitioners. These items include household articles, wearing apparels, electrical gadgets and furniture etc. Copy of the search-cum-seizure memo is placed on pages 212 & 216. In the statement of respondent No. 16 recorded on 13th August, 1998 as also during the course of arguments stand taken by respondent No. 16 is that Along with the house he had purchased all the furniture and whatever was lying in the house including the clothings as well. However, the agreement to sell dated 18th May, 1994, (photostat copy placed on the file) allegedly executed by petitioner No. 2 favouring respondent No. 16, is conspicuously silent that Along with the said house No. E-224 articles as shown in the said memo were also sold. There is also not the slightest whisper about the sale of the articles noted in the said memo in the reply affidavit dated 27th January, 1998 of respondent No. 16. It is pertinent to note that in the said memo there is mention of one note book of Modern School, Vasant Vihar at item No. 70, 75 memorandum of articles of association of R.V. Consultants (Pvt.) Ltd. of petitioner No. 1 at item No. 151, one cheque book of account No. 5-033617-005 containing cheque Nos. 623464, 65, 68 to 70 in the name of petitioner No. 2 of Citi Bank at item No. 156, one passport size photograph of petitioner No. 2 at item No. 157 and one letter pad in the name of petitioner No. 1 at item No. 160. These items possibly could not have been sold by petitioner No. 2 to respondent No. 16.

31. Further, averments made in the charge sheet in case FIR No. 259/94 (on pages 405 to 410) disclose that the rent agreement, special power of attorney in favor of respondent No. 16, general power of attorney in favor of R.K. Bhardwaj, attornment letter dated 18th May, 1994, agreement to sell in favor of respondent No. 16, affidavit dated 18th May, 1994, receipt for Rs. 3,00,000/-, will dated nil attested by Public Notary on 18th May, 1994 and arbitration agreement dated nil

attested on 18th May, 1994, all purported to have been executed and signed by petitioner No. 2 and handed over by respondent No. 16 to CBI together with the Notary register signed by a lady as Smt. Radha Khanna were sent for obtaining opinion to Government Examiner of Questioned Document, Shimla and as per its report dated 29th June, 1995 on page 412, none of the aforesaid documents or the Notary register were signed by petitioner No. 2. Respondent No. 16 alleges to have been put in possession of the aforesaid house excepting the portion in the tenancy of respondent No. 15, pursuant to the aforesaid documents by petitioner No. 2 on 18th May, 1994.

32. Circumstances referred to above prima facie go to show that respondent No. 16 came to occupy the first floor portion of the said house not as a result of sale thereof to him but in the manner alleged by the petitioners. Discrepancy in regard to mode of payment of the alleged sale consideration amount to petitioner No. 2 in the statements of respondent No. 16 recorded on 13th and 18th August 1998 further raises suspicion about the genuineness of the transaction.

33. At the cost of repetition, it may be stated that claim of respondent No. 15 is that he was inducted as a tenant on 30th March, 1994 in the ground floor portion of the aforesaid house by petitioner No. 2 on a monthly rent of Rs. 1,600/- for a period of three years and together with three months advance rent, Rs. 1,00,000/- were paid by way of refundable security by him. Rent note and the receipt are also stated to have been executed on the said date by petitioner No. 2. However, the petitioner No. 2 denies of having let the said portion of the house to respondent No. 15 or to have received Rs. 1,04,800/- and executed rent note and receipt, as alleged. According to her, rent note and the receipt have been fabricated on the papers on which her signatures were forcibly obtained by respondent No. 7 and five persons accompanying him in the night on 3rd April, 1994 regarding which a report was lodged by her on 4th April, 1994 with P.P. Sainik Farm. Be that as it may, one would not expect the letting of one office furnished, one drawing room furnished, one verandah and one bathroom on the ground floor of the aforesaid house in March 1994 on a paltry sum of Rs. 1,600/- per month. Prima facie respondent No. 15 seems to have trespassed into the ground floor portion of the house as alleged by the petitioners.

34. On the role allegedly played by the police authority, only two documents need to be referred - Criminal Writ Petition No. 673/93 filed by petitioner No. 2 against the Delhi Administration and others and the D.O. dated 20th October, 1995 sent by Sh. K. Padamnabhaiah, the then Home Secretary, Government of India to Sh. K. Vijay Rama Rao, Director CBI. In the above writ petition dated 9th July, 1993 Raghubir Singh, Additional Commissioner of Police, Greater Kailash, S.K. Rathi, S.H.O., P.S. Ambedkar Nagar and D.P. Singh, Incharge, P.P. Sainik Farm, Ambedkar Nagar, were imp leaded as respondents 3 to 5 respectively. A writ of mandamus was sought directing respondents 3 to 5 not to interfere with the right of privacy of petitioner No. 2 and her family and not to enter the petitioners'' house except in accordance with law. Direction was further sought to

respondent No. 2 Commissioner of Police to use his administrative power to keep the said three respondents within the limits of their authority. In short, the case set up by petitioner No. 2 in the petition was that she and the members of her family were being harassed unnecessarily by respondents 3 to 5. Said D.O. dated 20th October, 1995 speaks volumes about the petitioners'' being subjected to gross abuse of power by Delhi Police and, in particular, P.R.S. Brar/respondent No. 4. The manner in which the petitioners were dispossessed from their house No. E-224 coupled with the allegations made in the above petition and contents of the D.O. prima facie point out that the concerned police officers were in hand in glove with the persons who dispossessed them. In view of the respondents 17 to 19 facing trial in case FIR No. 259/94 we refrain from commenting further in the matter.

35. This brings us to the main argument advanced on behalf of some of the respondents that as alternate remedy in law is available to the petitioners, possession of aforesaid house No. E-224 cannot be restored to them under the extraordinary writ jurisdiction. Identical issue came to be considered in Smt. Anju Devi''s case (supra) rendered by a Division Bench whereof one of us (Y.K. Sabharwal, Actg.C.J.) was a member. In para No. 13 of the decision which is relevant it was observed thus:-

"13. In the light of the aforesaid facts the court is not help less in coming to the aid of the petitioner simply because the suit filed by her for possession is pending in the civil court. The suit was filed by the petitioner during the pendency of the writ petition since limitation period of six months was expiring and if not filed suit would have become time barred. It is only in exceptional cases and sparingly this court would direct delivery of possession while exercising extraordinary jurisdiction under Article 226 of the Constitution but we cannot accept the argument that this court has no such power. When the facts are so glaring as in the present case the court is not powerless and has rather obligation and duty to direct restoration of possession. The availability of other efficacious remedy knowing well that the said remedy i.e. suit will take considerable time cannot always be used as a weapon of defense to deny relief to the aggrieved person. It is true that generally power under Article 226 would not be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal but there is no bar in exercise of that power and where and when it is required to be exercised would depend upon the facts and circumstances of each case. The present case is not of two individuals, one having dispossessed the other, but is a case where a helpless lady has been thrown out of the house where, she was living for about four years, in whatsoever capacity, as a result of collusion and connivance of the police. In such circumstances, this court, to do complete justice between the parties, has wide and ample powers to pass appropriate orders including orders for restoration of possession. On the facts like the present it is the duty of the court to come to the aid of person who is oppressed and is in disadvantageous position and, Therefore, it is necessary to make innovations and forge new tools when atrocities are committed by those who are required to enforce the rule of law. The alleged offender cannot be permitted to take advantage of delay in justice delivery system. The contention that they may have prima facie committed the offence of trespass for the purpose of registration of F.I.R., which may be registered, and that the law will have it own course after registration of the F.I.R. and at this stage no orders for delivery of possession can be passed, cannot be accepted on the peculiar facts of this case. Of course, the criminal law will have its own course. Of course, the suit would also be decided on its own merits and this order will not prejudice parties in those proceedings but all this does not persuade us to deny the relief of putting the petitioner back into possession. All situations are not alike. What relief deserves to be given in exercise of jurisdiction under Article 226 cannot be placed in a rigid mould. It cannot be put in a straight jacket. The relief is to be moulded as the facts and circumstances of the case and cause of justice may demand. We are thus not persuaded to deny to the petitioner the relief of being put back in possession of the premises in which she has been living for nearly four years prior to 30th August, 1993, the years during which her husband and mother-in-law were admittedly living in separate premises. We are not concerned in this case with the question of title of the property but are concerned with the role of the police. Police has no right to take law into their own hands. On the facts and circumstances noticed herein-before, it is evidence that the police has taken law into their own hands and dispossessed the petitioner in complete disregard of rule of law. The action of the police has to be just, reasonable and fair. The impugned action of the police shows complete lack of commitment to the society and rule of law. Within the parameters of law, the police has to come to the aid of needy, helpless and the victims. Some bad elements in the Police force bring disrepute to the entire force and good officials and officers, which we hope would be in large number, may also have to suffer some-times because of few bad elements in the service. The time has indeed come for the Commissioner of Police to take stern action against the erring officers/individuals. Such officials have to be made accountable for undue interference in the life and liberty of the citizens. We hope that the Government and the Commissioner of Police would think of ways and means of restoring a high degree of confidence of society in police as such type of interference is increasingly coming to the notice of the court. Some officers in police force are required to be told that the aggrieved person cannot be treated the way the petitioner was treated. The facts are so glaring that it would shock the conscience of anyone."

36. It is alleged in the petition that in case FIR No. 196/94 lodged by R.S. Jindal/ respondent No. 10, petitioner No. 1 was taken into custody on 2nd April, 1994 while police obtained warrants of arrest against petitioner No. 2 on 4th April, 1994 and to avoid arrest petitioner No. 2 had fled away from the house. Evidently, trespass into aforesaid house No. E-224 was made on 14/26th April, 1994 in the absence of the petitioners. The stand taken by respondent No. 15 of his having been inducted as a tenant on the ground floor as also the plea taken

by respondent No. 16 of his having been delivered possession of the entire house except the tenanted portion, by petitioner No. 2 are supported by the said respondents on the basis of the documents which are prima facie fabricated. Trespass into the house was committed prima facie in collusion with the police authorities. Petitioner are out of possession of their valuable property for about 4-1/2 years. In such circumstances, it is obligation and the duty of the Court to direct the restoration of the possession of the said house to the petitioners and they cannot be non-suited on the ground of availability of alternate remedy.

37. Kedar Nath Bhardwaj/respondent No. 16 in his statement recorded on 13th August, 1998 has, inter alia, stated that respondent No. 15 vacated the ground floor about 4-5 months after he purchased the house and delivered possession thereof to him; that after about one year he sold the house to Anil Soni and Madhu Soni/respondents for a consideration of Rs. 5,00,000/- and handed over vacant possession thereof to them. Respondent No. 21, however, alleges to have purchased the house for Rs. 5,50,000/-. As noticed earlier, submission made on behalf of respondents 20 & 21 has been that they being bona fide purchasers for valuable consideration cannot be dispossessed from the house in these proceedings; that the conduct of the petitioners who are involved in a number of criminal cases of forgery and cheating etc., is not above board and the dispute in question being between private parties, disentitle the grant of discretionary relief as claimed to the petitioners. Respondents 20 & 21 derive their right, title and interest in the aforesaid house from respondent No. 16. They cannot have the rights more than what respondent No. 16 was having in the house. Since the possession of respondent No. 16 over the aforesaid house was itself unlawful, respondents 20 & 21 cannot resist the handing over of the possession there of to the petitioners of the ground of their being bona fide purchasers for valuable consideration. In our opinion, on the facts and circumstances of the present case, neither the alleged antecedents of the petitioners have any relevance whatsoever in the matter nor is it a case of dispute between two individuals. It will not be out of place to state that power to restore possession of immovable property u/s 456 Cr.P.C. can be resorted to by the Court only after recording the finding of guilt against the accused and the decision in case FIR No. 259/94 is likely to take couple of years time. Taking note of the ratio in Smt. Anju Devi''s case (supra) and the facts and circumstances of the case, the petitioners deserve to be put back into possession of their house No. E-224.

38. For the foregoing discussion, the petition is allowed. We order restoration of status-quo ante and direct the police authorities to put back the petitioners into possession of the aforesaid house within two weeks from today. Respondents 20 & 21 are directed to cooperate and not to interfere in delivery of possession to petitioners. The resistance, if any, by respondents 20 & 21 or any other person(s) shall strictly be dealt with by the police in accordance with law.

39. We may make it clear that nothing contained in this order will have any bearing in any criminal case initiated at the instance of or against any of the

parties to this petition or any other criminal and civil proceedings between the parties.

