
(2018) 08 RAJ CK 0113

In the Rajasthan High Court

Case No : Civil Writ Petition No.10848 of 2017

Walled City Hotels Pvt. Ltd. @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 21-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 08 RAJ CK 0113

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : M.S.Singhvi, Vikas Balia, Pratistha Dave, Sunil Purohit

Final Decision : Disposed Off

Judgement

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

â??(a) That the communication dated 21.08.2017 may kindly be quashed and set aside and so also the consequential actions taken by the respondent authorities.

(b) That the seal on the doorways may kindly be lifted and the petitioner may kindly be allowed to use all the 3 doorways.

(c) Any other writ, order or direction which Your Lordship may deem just and proper in the facts and circumstances stated above, in favour of the petitioner may kindly be allowed.

(d) The cost of the writ petition may kindly be awarded in favour of the petitioner.â??

2. The petitioner is a Company incorporated and registered under the Companies Act, 1956, and is challenging the illegal action of the respondent

authorities, whereby without any prior notice or intimation, the respondent authorities inspected the private property in question, which belongs to the

petitioner, and in gross violation of the principles of natural justice, proceeded to seal the doorways A, B, & C without any prior

intimation/communication/opportunity of hearing to the petitioner. 3. The petitioner is engaged in the hospitality business, and the property in question is

of 17th Century, and has been purchased by the petitioner in the year 2007. These are two properties, namely, (i) Raas Haveli and; (ii) Keru-Beru

Haveli, both owned by the petitioner. There is a Jhalra, which is a public property adjoining the property of the petitioner, where there are these three

doorways for ingress and egress of the property owners.

4. Mr.M.S.Singhvi, learned Senior Counsel assisted by Mr.Vikas Balia, Advocate appearing on behalf of the petitioner has pointed out that the cause

of grievance originates from the order dated 21.08.2017, which reads as under:-

â??dk;kZy; tks/kiqj uxj fuxe iksyhVsfDud dkWyst jsthMsUlh jksM tks/kiqj Ã? ekad ,Q3@mik;qDr@'kks/k@2017@1764 fnukad 21 vxLr 2017 Jh nhid

dukSft;k] vfrÃ?e.k izHkkjh] tks/kiqj uxj fuxeA

fo""k; rqjth dk >kyjs ij voS/k :i ls [kksys x;s njokts dks cUn djokus ckcr~A

Mk-Â euthflag] izeq[k 'kklu lfpo] Lok;Rr 'kklu foHkkx] jktLFkku t;iqj ds fnukad 1908-2017 dsk tks/kiqj izokl ds nkSjku rqjth dk >kyjk dk nkSjk fd;k

x;kA Jheku us ,sfrgkfld /kjksgj ij iMkSfl;ksa }kjk [kksys x;k njoktsa dks cUn fd;s tkus ds funsZ'k iznku fd;s x;sA

vr% vkidks funsZf'kr fd;k tkrk gS fd vki vkt gh ekSds ij tkdj rqjth dk >kyjk ij voS/k :i ls [kksys njoktsa dks lht djokdj ikyuk izLrqr djsaA

eksguflag jktiQjksfgr mik;qDr& 'kgj

tks/kiqj uxj fuxe

fnukad 21 vxLr 2017**

5. Learned Senior Counsel for the petitioner submitted that the respondent authorities directed the petitioner that the petitioner had opened the

doorways i.e. A & B on the public property without obtaining any prior permission from the respondent authorities, and doorway â??Câ?? was a way

between both the properties, which has been closed. Jhalra is a water body, and is a public property, and the doorways in question are existing since

the property in question came into existence.

6. Learned Senior Counsel for the petitioner has referred to a report of the INTACH, New Delhi, which is Annexure-11 of the writ petition, and

which reflects the doorways A, B & C. The said report also talks of the Jhalras being essentially meant for community bathing and to perform religious rites, being an advance form of Baori.

7. Learned Senior Counsel for the petitioner has stated that the oral directions and proceedings thereafter, are arbitrary and contrary to law.

8. On the other hand, learned counsel for the respondents have shown to this Court that the petitioner was duly given a notice, in accordance with law, on 06.07.2017, which is Annexure R/2/2.

9. Learned counsel for the respondents have further shown to this Court the Annexure-R/2/3 dated 12.07.2017; notice dated 02.08.2017 (Annexure-R/2/4); and the proceedings drawn by the Municipal Corporation, Jodhpur on 21.08.2017, reflecting that due application of mind was made by the respondents before issuing such notices.

10. Learned counsel for the respondents have further shown to this Court the notice dated 04.09.2017, which is Annexure-R/2/6.

11. Learned counsel for the respondents states that the petitioner had an alternative remedy, and since this writ petition is premature, therefore, the petitioner should have appeared, through its authorized representative, before the authorities concerned, and should have contested its case strictly in accordance with law.

12. Learned counsel for the respondents have further submitted that the present writ petition is premature, as the notices only contemplate action against the petitioner, and seek its response, in regard to the opening of the doorways in question.

13. Learned counsel for the respondents have also submitted that there is another encroachment made by the petitioner on the property in question.

14. Learned counsel for the respondents have further stated that there are disputed questions of facts and law involved in this case, and therefore, indulgence ought not to be granted to the petitioner.

15. In support of their contentions, learned counsel for the respondents have relied upon the precedent law laid down by the Honâ??ble Apex Court

in City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla & Ors., reported in (2009) 1 SCC 168, relevant paras 29 & 30 of

which read as under:-

29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex-parte writ of Mandamus, order or direction in a public law remedy. Further, while considering validity of impugned action or inaction the court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extra ordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty bound to consider whether :

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of Limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the court and particularly in cases where public revenue and public interest are involved.

Such directions always are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on

the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of

Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in

law.

16. Learned counsel for the respondents have also placed reliance on the

precedent law laid down by the Honâ??ble Apex Court in State of Orissa

& Ors. Vs. Mesco Steels Limited & Anr., reported in (2013) 4 SCC 340, relevant paras 19 & 20 of which read as under:-

â??19. It is obvious from a conjoint reading of letter dated 12th January, 2006 and communication dated 19th September, 2006 sent by the Director of

Mines in response thereto that a final decision on the subject had yet to be taken by the Government, no matter the Government may have

provisionally decided to follow the line of action indicated in its communication dated 12th January, 2006 issued under the signature of the Joint

Secretary, Department of Steel and Mines. It is noteworthy that there was no challenge to the communication dated 12th January, 2006 before the

High Court nor was any material placed before us to suggest that any final decision was ever taken by the Government on the question of deduction

of the area granted in favour of the respondent so as to render the process of issue of show cause notice for hearing the respondent-company an

exercise in futility.

20. On the contrary, the issue of the show cause notice setting out the reasons that impelled the Government to claim resumption of a part of the

proposed lease area from the respondent-company clearly suggested that the entire process leading up to the issue of the show cause notice was

tentative and no final decision on the subject had been taken at any level. It is only after the Government provisionally decided to resume the area in

part or full that a show cause notice could have been issued. To put the matter beyond any pale of controversy, Mr. Lalit made an unequivocal

statement at the bar on behalf of the State Government that no final decision regarding resumption of any part of the lease area has been taken by the

State Government so far and all that had transpired till date must necessarily be taken as provisional. Such being the case the High Court was in error

in proceeding on an assumption that a final decision had been taken and in quashing what was no more than an interdepartmental communication

constituting at best a step in the process of taking a final decision by the Government. The writ petition in that view was premature and ought to have

been disposed of as such. Our answer to question No.1 is accordingly in the affirmative.â??

17. Learned counsel for the respondents have further placed reliance on the

judgment rendered by this Honâ??ble Court in Gandhi Vidya Mandir,

Sardarshahar Vs. State of Rajasthan & Ors., reported in 2014(1)Â CDR 335 (Raj.), relevant paras 13 to 17 of which read as under:-

â??13. Having perused the record and after hearing the learned counsels at some length, this Court is of the opinion that the present writ petitions

filed by the petitioners are premature. The questions raised in the present writ petitions, namely, as to whether the Rajasthan Municipalities Act, 1959

is applicable to the land in question and the petitioner-institution or not and whether the provisions of Sec.170 and 173-A and other relevant provisions

and byelaws are applicable to the petitioner or not and whether the conversion charges can be demanded from the petitioner or not and whether the

petitioner is obliged to obtain prior permission from the respondent-Municipal Authorities or approval of map and sanction for raising such construction

on the land in question are all questions, which are mixed questions of facts and law.

14. The notices and communications by the respondent-Municipal Board through its Executive Officer referred to above are merely show cause

notices and communications calling upon the petitioner-institution to show cause and establish before the competent authority as to whether such

conversion charges can be demanded from the petitioner-society or not and whether it is equally bound by the provisions of the Act of 1959 for

seeking prior permission for raising construction and approval of maps etc., or not. Though some representations and replies appear to have been filed

by the petitioner-society before the respondent-Executive Officer, it is clear from the record that no proper adjudication orders in this regard deciding

such objections raised by the petitioner-society have been passed by the said Executive Officer or any other competent authority of the respondent-

Municipal Board, Sardarshahar.

15. In absence of these questions having been decided without proper evidence on record and without findings of facts by the competent authority of

the respondent-Municipal Board, it would be premature for this Court to pronounce upon the applicability of these provisions and validity of the levy of

conversion charges sought to be raised against the petitioner-institution or the requirement of prior approval of the maps or sanction for construction.

Prima facie this Court is of the opinion that a big chunk of land was allotted to

the petitioner, some portion of which is apparently being used for the purposes other than the educational purposes for which the petitioner was allotted this huge chunk of land of about 4000 bighas way back in the year 1951-52, as to how some portion of big chunk of this land was passed on to other private entrepreneurs or even Government departments on which hotels, petrol pump, GSS station, etc. came up, are all questions of facts which require an enquiry in the matter. Since the allotment was made in favour of the petitioner-society, burden lies upon the petitioner-Society to show as to how and how much portion of land in question has gone away from it and on the remaining portion also, whether conversion charges under Sec.173-A of the Act of 1959 can be demanded or not and whether the other provisions relating to sanction of map and construction permission etc. under Sec.170 of the Act, can be applied to them or not.

16. Thus, all aforesaid mixed questions of facts and law are apparently yet to be properly adjudicated by the concerned authority of the Municipal

Board, Sardarshahar. The provisions of Rajasthan Municipalities Act, 1959 also provides for appeals and revisions before higher authorities in this

regard. In view of complete mechanism provided under the law, this Court does not consider it expedient to decide these questions prematurely

without adequate material on record in this regard. It is therefore considered necessary that the petitioner-society should lay all proper material and

evidence before the respondent-Municipal Board itself and the competent authority of the Municipal Board, Sardarshahar, namely, the Executive

Officer should be directed to decide these questions by appropriate speaking adjudication order deciding the objections raised by the petitioner-society.

17. Accordingly, all these writ petitions are disposed of by directing the petitioner to appear before the Executive Officer, Municipal Board,

Sardarshahar in the first instance on 4.3.2013. On that date or within a week thereafter, a show cause referring to the relevant provisions of the Act

may be served by the said Executive Officer of the Municipal Board, Sardarshahar on the petitioner-society or its authorized representative. The

petitioner-Society is expected and directed to adduce necessary evidence and file reply to the show cause notices within 15 days therefrom.

Thereafter the respondent-Executive Officer of the Municipal Board may give an opportunity of hearing to the petitioner and pass appropriate

speaking adjudication order deciding the objections of the petitioner-society in accordance with law. Such process may be undertaken and completed

within a period of 3 months from today with no further extension of time permitted to either of the parties. It is needless to say that if the adjudication

order(s) passed by the Executive Officer are against the petitioner-society, it will be free to avail the Departmental remedies provided under the

Rajasthan Municipalities Act, 1959 of appeal or revision, as the case may be, and the payment of conversion charges and other requirements relating to

sanction for construction etc. will also abide by such orders to be passed by the authorities under the said Act.â??

18. Learned Senior Counsel for the petitioner, in his rejoinder arguments, has submitted that the petitioner has a limited argument only pertaining to the

doorways in question, which are in existence, since the property in question has come into existence, and therefore, the respondent authorities are not

empowered to close the doorways in question.

19. In his rejoinder arguments, learned Senior Counsel for the petitioner has argued that the respondents are acting with predetermination, and without

conducting any proceeding, the respondent authorities are only acting upon the order pursuant to the inspection made by a senior officer, and have

passed the order of closure/seizure of the doorways in question on 21.08.2017.

20. Learned Senior Counsel for the petitioner, in his rejoinder arguments, further pointed out that the language of the notice suggests that the

respondent authorities were not sure as to what action they propose to take against the petitioner, and were merely trying to browbeat the petitioner by

taking unlawful action against the petitioner.

21. Learned Senior Counsel for the petitioner has drawn the attention of this Court towards the orders dated 01.08.2017 and 21.08.2017, which are

Annexure-R/2/5, passed by the Municipal Corporation, Jodhpur.

22. Learned Senior Counsel for the petitioner, in his rejoinder arguments, has further fortified the petitioner's case that the summary proceeding

can be initiated only when the unauthorized occupation of the Government property is not disputed, whereas in this case, it is not disputed that the

property in question is owned by the petitioner, and the petitioner has only used and utilized the same in accordance with law.Â In this regard, learned

Senior Counsel for the petitioner has relied upon the precedent laws laid down by

the Honâ??ble Apex Court in Government of Andhra Pradesh Vs.

Thummala Krishna Rao & Anr., reported in (1982) 2 SCC 134; State of Rajasthan Vs. Padmavati Devi (Smt.) (Dead) by LRs. And Ors., reported in

1995 Supp (2) SCC 290; and of this Court in The State of Rajasthan & Ors. Vs. Smt.Mad Kanwar & Anr. (D.B.Civil Special Appeal (Writ)

No.361/2007 decided on 17.11.2016). The relevant portions of the said judgments read as under:-

Government of Andhra Pradesh Vs. Thummala Krishna Rao & Anr. (supra):

â??9. The view of the Division Bench that the summary remedy provided for by section 6 cannot be resorted to unless the alleged encroachment is of

a very recent origin"", cannot be stretched too far That was also the view taken by the learned single Judge him self in another case which is reported

in Meherunnissa Begum v. State of A.P. which was affirmed by a Division Bench. (2) It is not the duration, short or long, of encroachment that is

conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for

the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration

whether the claim of the occupant is bona fide. Facts "" which raise a bond fide dispute of title between the Government and the occupant must be

adjudicated upon by the Ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person

summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for

an appreciable length of time can be taken, prima facie, to have a bonafide claim to the property requiring an impartial adjudication according to the

established procedure of law.

10. The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a

summary inquiry contemplated by sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in- title of these plots

raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged

originally to the family of Nawab Habibuddio from whom the respondents claim to have purchased it. The question as to whether the title to the

property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property

thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in

establishing its title to the property but, until that is done, the respondents cannot be evicted summarily.â??

State of Rajasthan Vs. Padmavati Devi (Smt.) (Dead) by LRs. And Ors. (supra):

â??6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation

of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bonafide dispute about his right to remain

in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in

Government of Andhra Pradesh v. Thummala Krishna Rao and Anr. 1982 (3) SCR 5000, has laid down that the summary remedy for eviction

provided by Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land

which is the property of the Government and if the person in occupation has a bonafide claim to litigate he could not be ejected save by the due

process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of

complicated questions of title. For the same reasons, it can be said that summary remedy available under Section 91 of the Act is not the legal process

which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bonafide

claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law.â??

The State of Rajasthan & Ors. Vs. Smt.Mad Kanwar & Anr. (supra):

â?? It is well-settled that under the Act of 1964, an unauthorized occupant on public premises can be evicted, but if there is any dispute about title

supported by cogent evidence to arrive at the conclusion that prima facie such dispute exists, then it is not open for the Estate Officer to examine the

same. Such an issue is required to be settled by a civil court of competent jurisdiction.â??

23. Learned Senior Counsel for the petitioner, in his rejoinder arguments, further

submitted that the concept of oral direction is unknown to the

Administrative Law, and the manner in which the visit of the Principal Secretary concerned has resulted into closure of the doorways in question,

reflects the highhandedness on the part of the respondent authorities. In this regard, reliance has been placed on the precedent law laid down by the

Honâ??ble Apex Court in State Inspector of Police, Vishakhapatnam Vs. Surya Sankaram Karri, reported in (2006) 7 SCC 172, relevant para 16 of

which reads as under:â??16. The approach of the learned Special Judge, to say the least, was not correct. When a statutory functionary passes an

order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A

statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is

unknown in Administrative Law. The statutory functionaries are enjoined with a duty to pass written orders.â??

24. Learned Senior Counsel for the petitioner, in his rejoinder arguments, further submitted that where the procedure for eviction is not complied with,

lessee holding over the property can invoke writ jurisdiction under Article 226 of the Constitution of India. In this regard, reliance has been placed on

the judgment rendered by this Honâ??ble Court in M/s. Chandra & Co. Vs. State, reported in AIR 1981 Rajasthan 217, relevant para 33 of which

reads as under:-

â??33. From the aforesaid facts and circumstances, it is established that the petitioner, had been in possession of the cinema theatre since long and

during the pendency of the proceedings for eviction of the petitioner initiated under the provisions of the Act, the petitioner was dispossessed from the

cinema theatre without authority of law by respondents Nos. 4 and 5. It cannot be said that the petitioner was a rank trespasser. The petitioner is,

therefore, entitled to seek relief under Article 226 of the Constitution against the aforesaid arbitrary and illegal interference with its right to remain in

occupation of the cinema theatre till evicted therefrom, in accordance with law and the petitioner is entitled to be restored to the same position in

which it stood prior to aforesaid illegal action of respondents Nos. 4 and 5 in dispossessing the petitioner from the cinema theatre otherwise than in due

course of law.â??

25. Learned Senior Counsel for the petitioner has, in his rejoinder arguments, further shown to this Court that the respondents do not have the power to evict the petitioner by force and have to proceed only in accordance with law, and if the doorways in question are in existence since the property came into existence, which is said to be of 17th Century, then it was not open for the respondents to have used the power or authority to compel the petitioner to close the doorways in question. In this regard, learned Senior Counsel for the petitioner has placed reliance on the judgment rendered by this Honâ??ble Court in Karam Singh Vs. The State of Rajasthan & Ors. (Civil Writ Petition No.596/1969 decided on 17.03.1971), reported in AIR 1971 Raj. 265, relevant paras 14 to 17 of which read as under:-

â??14. In similar circumstances, the Punjab High Court in State of Patiala and E. P. States Union, Patiala v. Mohinder Singh Natha Singh AIR 1958 Punj 325 has held that the general purpose of the law is that regardless of the actual condition of the title to, or the right of possession of the property, the party actually in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. There is no provision of law which empowers a State Government by force or show of force to evict a person who is in actual possession of immovable property. If the State Government were of the opinion that the State had the superior title or the better right to possession it is open to them to bring an appropriate action against him and to secure his eviction in accordance with the provisions of law.

15. I entirely agree with the views expressed by their Lordships of the Punjab High Court in the above authority. In this age of rule of law such high-handed action on the part of the Government officials can never be thought of. It is very difficult for the respondents to justify the action taken by them. From the events that have been brought on record it appears that perhaps the State authorities wanted to oblige the purchaser of this land by evicting the petitioner and his colleagues by taking resort to the provisions of Section 22 of the Colonisation Act and handing over the possession thereof to the purchaser. I do not think that the mandate of Section 22 of the Rajasthan Colonisation Act in any manner empowers the Colonisation authorities to take the law in their own hands in this fashion. It is a clear case of highhanded action on the part of the Government officials which must be deprecated by all law-abiding citizens.

16. Learned counsel appearing on behalf of purchaser Variyam Singh urged that if the possession of the land in question is to be restored to the

petitioner and his colleagues by allowing their writ petition, then they should be put on terms because being tenants of the purchaser they cannot enjoy

the possession free of cost. I think, I need not go into this question because before the petitioner and his colleagues were ejected they were not paying

any rent to anybody because of the litigation going on in the court of law. The only course which appears to me to be just in this case is to restore the

status quo ante at the time when the ejectment had taken place and leave the parties to take recourse to the court of law to get their rights established.

17. For the reasons mentioned above, the writ petition is allowed, the order passed by the Additional District Magistrate (Colonisation), Kota dated 3rd

June, 1969 (Ex. 14) is hereby quashed and the action taken in pursuance of this order against the petitioner and his colleagues is declared illegal. The

petitioner and his colleagues shall be restored the possession of the land in question. The petitioner shall get his costs of this writ petition from

respondent No. 6 who was the prime mover in this case.â??

26. In his rejoinder arguments, learned Senior Counsel for the petitioner has further submitted that the writ petition should not be rejected, if otherwise

maintainable, even though the alternative remedy is available. In this regard, learned Senior Counsel has placed reliance on the precedent law laid

down by the Honâ??ble Apex Court in S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors., reported in (2004) 7 SCC 166, relevant para

13 of which reads as under:-

â??13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out

of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the

sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the

consideration of the Court, whatever view the Court may have taken . Thus when the liability to Income Tax was questioned by an applicant on the

ground of her non- residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact the

suppression of which disentitled her from the relief claimed. Again when in earlier

proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order.â??

27. In his rejoinder arguments, learned Senior Counsel has also made a submission regarding order of the statutory authority and validity thereof, and how to judge the same, and that, the government should act fairly and in accordance with the principles of natural justice. In this regard, learned Senior Counsel has placed reliance on the precedent laws laid down by the Honâ??ble Apex Court in *Ram and Shyam Company Vs. State of Haryana & Ors.*, reported in (1985) 3 SCC 267 and *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*, reported in (1978)1

SCC 405. The relevant portions of the said judgments read as under:-

Ram and Shyam Company Vs. State of Haryana & Ors. (supra):

â??9. Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in *Assistant Collector of Central Excise v.*

Jainson Hosiery Industries rejected the writ petition observing that 'the petitioner who invokes the extraordinary jurisdiction of the court under Art. 226

of the Constitution must have exhausted the normal statutory remedies available to him'. We remain unimpressed. Ordinarily it is true that the court

has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective,

adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of

convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by

the High Court in *The State of Uttar Pradesh v. Mohammad Nooh* it is observed that there is no rule, with regard to certiorari as there is with

mandamus, that it will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained

against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High

Court under Art. 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal

in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits.

Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for

all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister ?

The clutch of appeal from Caesar to Caesar wife can only be bettered by appeal from one's own order to oneself.

Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an

effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the

instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There

was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court.â??

Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors. (supra):

â??8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by

the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the

beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw

attention to the observations of Bose J. in *Gordhandas Bhanji (1)* "Public orders, publicly made, in exercise of a statutory authority cannot be construed

in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to,

do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older:

A Caveat.â??

28. Apart from the aforementioned precedent laws, learned Senior Counsel for the petitioner, in his rejoinder arguments, has also relied upon the

precedent law laid down by the Honâ??ble Apex Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I &

Ors., reported in AIR 1961 SC 372, relevant paras 27 to 30 of which read as under:-

â??27. Mr. Sastri next pointed out that at the stage when the Income-tax Officer issued the notices he was not acting judicially or quasi-judicially and

so a writ of certiorari or prohibition cannot issue.

It is well settled however that though the writ of prohibition or certiorary will not issue against an executive authority, the High Courts have power to

issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting

without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will

issue appropriate orders or directions to prevent such consequences.

28. Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-

tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in

the assessment proceedings and, if unsuccessful there, before the appellate officer or the appellate tribunal or in the High Court under section 66(2) of

the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a

writ or order prohibiting an authority acting without jurisdiction from continuing such action.

29. In the present case the company contends that the conditions precedent for the assumption of jurisdiction under s. 34 were not satisfied and come

to the court at the earliest opportunity. There is nothing in its conduct which

would justify the refusal of proper relief under Art. 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

30. We have therefore come to the conclusion that the company was entitled to an order directing the Income-tax Officer not to take any action on the basis of the three impugned notices.â??

Learned Senior Counsel for the petitioner, through this precedent law has tried to submit that there is nothing in the conduct of the petitioner, which would justify refusal of the appropriate relief under Article 226 of the Constitution of India, and when the Constitution of India confers upon the High Courts the power to give such relief, then it becomes the duty of the Courts to give such relief in fit cases, and the Courts would be failing in their duty if such relief is refused without any adequate reason.

29. After hearing learned counsel for the parties as well as perusing the record of the case, alongwith the precedent laws cited at the Bar, this Court finds that the whole controversy pertains to the doorways, which open, from the private property of the petitioner, in the Jhalra, which is a public property.

30. Learned counsel for the respondents have not been able to refute that the doorways in question are in existence, since the property in question has come into existence i.e. (i) Raas Haveli in 17th Century; and (ii) Keru-Beru Haveli in 1950.

31. This Court has also seen that the orders passed by the respondents smack of arbitrariness, as merely a visit by a senior officer prompted the respondents to give a knee-jerk reaction. However, since the proceedings in pursuance of the aforementioned notices are going on, therefore, this Court is not inclined to give its final verdict regarding the rights of the petitioner to utilize the doorways A, B & C in question.

32. However, since the prima facie facts point out that all the three doorways in question are existing since the property in question has come into existence and the respondents are not in a position to refute the same at this stage, therefore, the respondents are directed to allow the petitioner to

use and utilize all the three doorways in question, as it would not cause any irreparable loss to the respondents, or shall not infringe upon the balance of convenience of the respondents or the public at large, and therefore, the three doorways in question shall be allowed to be accessed by the petitioner, as per its rights existing prior to the impugned action by the respondents. Accordingly, the seizure of the doorways put by the respondent authorities shall be lifted immediately. However, this order shall not prejudice either of the parties, as the Municipal Corporation shall have a right to conduct any proceeding, which is prescribed under law, while giving proper opportunity of hearing to the petitioner, and thereafter, to pass final orders regarding the doorways in question; until then, the status of the doorways in question, in the manner directed above, shall be maintained.

33. The issues pertaining to alternative remedy, premature petition, disputed questions of facts and law, summary proceedings, concept of oral direction, procedure for eviction, power of Authority to evict the petitioner by force, maintainability of the writ petition even though the alternative remedy is available and the order of the statutory authority and its validity alongwith principles of natural justice, are the issues, which have been raised by both the parties, need not be gone into at this stage, as this Court has left it open to the law to take its own course. Until then, the doorways in question, which are admittedly the private property of the petitioner, shall not be sealed or closed or interfered with by the respondents, until the respondents shall conduct appropriate legal proceedings, strictly in accordance with law, without getting prejudiced by this order.

34. It is further made clear that this order shall not prejudice the rights of the party to use and utilize the doorways in question, and the present intervention is only to the extent of the interim action taken by the respondents, whereby the doorways in question have been seized. Therefore, the impugned order/communication dated 21.08.2017 to this effect, alongwith its consequential actions, is quashed and set aside, while the use and utilization of the doorways in question by the petitioner, shall remain subject to the final orders to be passed by the respondents, strictly in accordance with law, after completing the process as prescribed in law.

35. With the aforesaid observations and directions, the present writ petition is disposed of.