



Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No.21/2024

Date of Judgment: 10.11.2025

1. The Union of India represented by Under Secretary, Ministry of Defence, New Delhi.
2. The General Army Commander, Army Headquarter, New Delhi.
3. The Brigade Commander, Headquarter 24 MTN BDE, C/o 99 APO.
4. The Station Commander, Station Headquarter, Umroi Military Station, C/o 99 APO.
5. The Colonel Administration for Station Commander, Umroi Military Station, C/o 99 APO. Petitioners

Vs.

Smti. Koshiliya Choudhury

..... Respondent

Coram:

Hon'ble Mr. Soumen Sen, Chief Justice

Appearance:

For the Petitioners : Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv

For the Respondent : Mr. S. Thapa, Adv with
Mr. S. Chanda, Adv

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT: (Oral)

This revisional application is directed against an order dated 31.01.2023 passed in a proceeding filed by the plaintiff under Order 39



Rule 2A read with Section 151 of the Code of Civil Procedure, 1908 (CPC) filed on 18.02.2021.

2. In or about 27.07.2016, the plaintiff filed the suit being T.S. No.6 (T) of 2016 before the Court of Assistant to the Deputy Commissioner (Judicial) at Nongpoh praying, inter alia, for a declaration that she is entitled to peaceful occupation of the suit premises without any intrusion from the petitioners herein, refund of all expenditure as per bills incurred by her for renovating and constructing the suit premises and the shed within the suit premises and also for a permanent restraining the petitioners herein from interfering with her peaceful possession of the suit premises.

3. The facts and circumstances resulting in the filing of the suit in brief are that the plaintiff is a bona fide tenant under the opposite parties. She had taken the suit premises/plot of land being allotted to her by the Station Commander, Station Headquarters on rent for the construction of a shed for the purpose of running a shop dealing in chat and sweets shop (shop No.17) and a chicken shop (shop No.16) under a memo of agreement dated 01.04.2015 executed between the petitioners and the plaintiff. The monthly rental in respect of the said premises has been fixed at Rs.7400/- and Rs.2400/- per month, respectively. Since



the shop rooms are in a shabby and dilapidated condition, the plaintiff repaired and renovated the shop rooms on a clear understanding that in the event the plaintiff is required to leave the shop rooms she shall either be accommodated in another place or the amount invested by her shall be refunded by the present petitioners. On the basis of such understanding, it is claimed that the plaintiff expended a substantial amount for the purpose of renovation and construction of the shed after obtaining necessary permission from the petitioners, as would appear from the letter dated 14.01.2011. Since then, the plaintiff is in peaceful occupation of the two shop rooms and has been carrying on her business without any hindrance. Sometime in the month of March, 2016 some officials of the present petitioners started interfering with the peaceful possession and occupation of the said shops without any reason and was objecting to the business being carried out by the plaintiff from the said two shop rooms. She was threatened with eviction. In or about April, 2016, the plaintiff approached the petitioners for renewal of the agreement. The defendants/petitioners on one pretext or the other delayed the same and when the said agreement was not renewed, the plaintiff became suspicious and being dissatisfied with their behaviour requested the petitioners to refund the amount/expenditure incurred and



to accommodate the plaintiff to some other place as agreed earlier at the time of the commencement of the agreement to which the petitioners assured her of redressing her grievance and promise to do the needful. However, contrary to such representation and assurance in or about July, 2016 some officials of the petitioners at the instance of the defendant No.5 came to the shop premises of the plaintiff and threatened the plaintiff with dire consequences in the event the shop rooms are not vacated immediately. Apprehending the dispossession, the plaintiff filed the aforesaid suit.

4. On 28.07.2016, the learned trial court passed an order restraining the defendants from interfering with the peaceful possession and occupation of the plaintiff of shop No.17 and shop No.16 respectively, besides doing anything that may adversely affect her interest in the said shops. The order was initially made ex parte but was extended from time to time in presence of the petitioners and ultimately on 11.12.2020 an order was passed directing the parties to maintain the status quo as prevailing on that date till 08.02.2021 in respect of the suit properties. On 08.02.2021, the Presiding Officer was on leave and the matter was taken up again on the following day i.e. 09.02.2021, when the status quo as ordered on 11.12.2020 was again extended till



18.02.2021. Subsequently, on 18.02.2021 it was finally ordered that status quo as on 11.12.2020 is to be maintained in respect of the suit properties till disposal of the suit and the misc. case was disposed of accordingly.

5. In or about 18th February, 2021, the plaintiff filed an application under Order 39, Rule 2A read with Section 151 of the CPC dated 18.02.2021 for alleged violation of the orders of the learned trial court dated 11.12.2020 and 09.02.2021, respectively. It was alleged that the present petitioners/defendants by taking advantage of the absence of the Presiding Officer on 08.02.2021 dispossessed the plaintiff from the suit premises on 09.02.2021 by force. The plaintiff also contended that when the Presiding Officer resumed court on the following day i.e. 09.02.2021, on her application the court ordered that the status quo as on 11.12.2020 be extended till 18.02.2021. This order alleged to have been communicated to the defendants on the same day but the plaintiff was not restored to possession of the properties in question. The contention of the present petitioners before the learned trial court appears to be that since the order of status quo was to operate and remain valid till 18th February, 2021, it would imply that upon the stroke of midnight on 09.02.2021, the benefit of status quo would



automatically extinguish and become inoperative. It was further alleged that the plaintiff had wilfully vacated the suit premises in the morning of 09.02.2021, therefore, the present petitioners have not flouted any order of the court.

6. The matter was heard extensively by the learned trial court and ultimately the learned trial judge has passed, inter alia, the following directions:

- “a) Status quo ante, as directed and described in orders dated 11.12.2020 and 09.02.2021, is to be restored;
 - b) Defendants are to be peacefully restore status quo ante and handover possession to the plaintiff;
 - c) Defendants shall file an affidavit confirming the completion of handing over possession and restoration of status quo ante;
- it is made clear that this order does not otherwise reflect upon the merits of the main suit which is still to be decided.”

7. This order is presently under challenge.

8. The learned Deputy Solicitor General has submitted that in a similar situation, the Division Bench of this Court by an order dated 26.07.2022 passed in WA No.18 of 2021 [*Koshilya Choudhury v. Union of India & ors*] in relation to another property belonging to the plaintiff had while not appreciating the manner in which the appellant was dispossessed of the properties directed payment of compensation after recording that the writ petitioner/appellant overstayed her welcome



and there is no equity in favour of the appellant and the appellant could not be put back into possession. The learned DSG further contended that the plaintiff is a mere licensee for one year and in the meantime the Government of India had come up with a new policy for allotment of shops to the war widows and battle casualties. The learned DSG has submitted that the license of the plaintiff was never renewed after one year and the shops are essentially meant for the war widow and battle casualties. The plaintiff has become a trespasser after the license period was over. It is further submitted that after taking possession on 09.02.2021, the shops have been let out to third parties and in the event, the petitioners are directed to put back the plaintiff to the original possession it would cause prejudice to the third parties who are presently in possession of the shop rooms.

9. We are governed by the rule of law. One of the fundamental principles of law that does not require reiteration is might is right and an injustice would prevail over justice in the hands of powerful person or authority have no place in our judicial system. Whenever injustice is caused the court must step in so that the faith of the people in the justice delivery system remains unshaken. Judiciary is respected because it is capable of removing injustice and is expected to do so. While India



became independent at the stroke of midnight, one of its citizens was dispossessed on a specious plea that the plaintiff is only entitled to the benefit of the interim order till the midnight of 08.02.2021 and with the advent of the morning – new day – the plaintiff would forfeit all the benefits and protection that the plaintiff had been enjoying till 08.02.2021. It is a matter of serious concern the manner in which the interim orders have been flouted. The petitioners are not private bodies and cannot be allowed to take the law into their own hands. Moreover, it is a fact that the plaintiff was in no way responsible for the expiry of the interim order after 08.02.2021 and the interim order was restored immediately on 09.02.2021. An act of court shall not prejudice a litigant. The court was not functional on the particular day. The plaintiff cannot suffer for the consequences that may occur due to the absence of the court on that date and render remediless. The plaintiff was enjoying the interim order throughout in different forms till 08.02.2021 and the petitioners are not denying that the plaintiff was in possession till 08.02.2021 by reason of the interim order. Even if it is assumed for the sake of argument that on 09.02.2021, the prayer for an interim order needs a fresh consideration on the basis of the records available, there are enough justifications for an interim order till the disposal of the suit.



The petitioners have not challenged the initial order dated 28.07.2016 by which an order of injunction was passed, nor any of the subsequent orders by which the right of the plaintiff vis-à-vis the properties have been preserved. Given the position that the petitioners hold in the public domain, propriety demands that they ought to have waited for the court to resume its functioning and ought not to have taken steps to circumvent the orders passed in favour of the plaintiff since July, 2016.

10. It is also important to note that the misc. case was disposed on 18th February, 2021 by a detailed reasoned order. The submission of the parties was recorded and thereafter, the court has independently assessed the material on record and on due consideration of the submissions made, disposed of the misc. case by directing the parties to maintain the status quo as on 11.12.2020 till the disposal of the main suit. The plaintiff was in possession of the said properties. The order dated 08.02.2021 is not under challenge. Even in the order passed by the Division Bench on 26.07.2022, the manner of taking over possession by the present petitioners, who are respondents in the said proceeding was not appreciated as would be evident from the views expressed by the Hon'ble Division Bench in paragraph 3 of the said order, which reads as follows:



“3. Though there may be no equity in favour of the appellant in this case, in the system followed in this county governed by the rule of law, no person or the high or mighty can take the law into its own hands and evict a person – even a rank trespasser – without restoring to the procedure established by law.”

(emphasis supplied)

The aforesaid order was passed in a writ petition.

11. However, unlike the matter where the aforesaid order was passed in the instant matter, the parties have been litigating since July, 2016 and by reason of the orders of the learned trial court, the plaintiff was enjoying interim protection. It is neither fair nor desirable that the petitioners would take advantage of the absence of the Presiding Officer for a day to dispossess the plaintiff and the absence for a day ought not to have been used for the purpose of entering the premises of the plaintiff to dispossess her from the suit premises and take illegal possession. The petitioners are not contending that they have taken possession of the properties in question by due process of law. The written statement was not filed in time. They have not made any counterclaim in the written statement. No suit was filed for eviction of the plaintiff. The crux of the submission appears to be that the government being the licensor and owner of the property has undoubted power to take possession of the land given under a license with the licensee continue to remain in possession of the properties in question



on revocation or expiry of the license period, a view that was at one point of time accepted in some of the judicial decisions one of which is *State of West Bengal v. Birendra Nath*¹ where CJ Chakravarti following the principles laid down by the Court of Appeal (in *Hemmings v. Stoke Poges Golf Club Ltd.*²) observed that on termination of the lease, the full right of the lease hold property including the right of possession, revert to the lessor and he then becomes entitled to enter his own land and take with it what order he likes. “If the lessor in making a forcible entry infringes the criminal law, he will make himself liable to be punished under a prosecution but he will infringe no right of the lessee...For forcible entry the lessee himself, if he has become a trespasser, has no cause of action against the lessor merely on the ground that it was forcible”.

12. This view however did not find favour with the other courts including the Supreme Court as in *Lallu Yeshwant Singh (dead) by his legal representative v. Rao Jagdish Singh*, AIR 1968 SC 620, the Supreme Court referred to the above Calcutta case and observed:

“In that case the High Court refused to issue an order under Article 226 of the Constitution prohibiting the Government from forcibly taking possession of lands which had been validly

¹ AIR 1955 Cal 601

² (1920) 1 K.B. 720



resumed by Government. We are not concerned with that question here. But we do not agree with the conclusion of the High Court that a lessor is entitled in India to use force to throw out his lessee.” (emphasis supplied)

13. Prior thereto in *Midnapur Zamindary Co. Ltd. V. Naresh Narayan Roy*, AIR 1924 PC 144 the Privy Council observed:

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

14. Again, in *K.K. Verma v. Union of India*, AIR 1954 Bom 358, it has been laid down:

“Under the Indian Law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy his possession is juridical and that possession is protected by statute.” (emphasis supplied)

15. In the Full Bench decision of the Allahabad High Court in *Yar Muhammad v. Lakshmi Das*, AIR 1959 All 1 (FB), it is observed:

“Law respects possession even if there is no title to support it. It will nor permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court.” (emphasis supplied)

16. On consideration of the aforesaid decisions, a Division Bench of the Calcutta High Court in *Union of India & ors v. P.C. Ray & Co.*



*India (Pvt) Ltd.*³ make the following observation in paragraph 38, which reads as follows:

“38. The ratio of the decisions appears to be that a lessee continuing in possession on expiry of lease is entitled in law to retain his possession against all including those having best of title till evicted by due process of law.....”

17. In a later decision in *Krishna Ram Mahale (dead) by his LRS. v. Mrs. Shobha Venkat Rao*⁴ this principle was reaffirmed and reiterated as would appear from the following observation:

“8. 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 v. Rao Jagdish Singh*. This Court in that judgment cited with approval the well known passage from the leading Privy Council case of *Midnapur Zamindary Company Limited v. Naresh Narayan Roy* where it has been observed:

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

9. The proposition was also accepted by a Division Bench of this Court in *Ram Rattan v. State of Uttar Pradesh*. The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under

³ 1974 SCC OnLine Cal 248

⁴ (1989) 4 SCC 131



the law. In the present case, we may point out that there was no question of the plaintiff entering upon the premises as a trespasser at all, as she had entered into the possession of the restaurant business and the premises where it was conducted as a licensee and in due course of law. Thus, defendant 3 was not entitled to dispossess the plaintiff unlawfully and behind her back as has been done by him in the present case. It was pointed out by Mr. Tarakunde that some of the observations referred to above were in connection with a suit filed under Section 6 of the Specific Relief Act, 1963 or analogous provisions in the earlier Specific Relief Act, 1877. To our mind, this makes no difference in this case as the suit has been filed only a few weeks of the plaintiff being unlawfully deprived of possession of the said business and the premises and much before the period of six months expired. In view of the aforesaid conclusions arrived at by us, we do not propose to consider the question whether the agreement between the plaintiff and defendant 3 amounted to a license or a sub-lease.” (emphasis supplied)

18. In a revisional jurisdiction, unless there is an error of jurisdiction or a patent error of law resulting in a serious miscarriage of justice or there is a manifest injustice caused to a party by reason of the order, the revisional court is not to interfere with the discretion exercised by the learned trial court. The revisional court is not exercising its power as an appellate court. The learned trial court has taken into consideration the undue haste and the arbitrary conduct of the petitioners in overreaching the court orders and in my view has rightly exercised its discretion in directing status quo ante. On such consideration, I do not find any reason to interfere with the order passed by the learned trial court. It is well settled that Article 227 bestows the high courts with powers of



administrative and judicial superintendence over subordinate courts. The test for exercise of such power was laid down in a 5-Judge Constitution Bench decision of this Court in *Rajendra Diwan v. Pradeep Kumar Ranibala*⁵ as follows:

“85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised ‘in the cloak of an appeal in disguise’.

86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not reassess or re-analyse the evidence and/or materials on record.... The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law”. (emphasis supplied)

19. Order 39 Rule 2A read with Section 151 CPC takes care of a situation like this where there has been disobedience of an order passed by a court and where it appears to the court that irremediable mischief has been done, the status quo ante might be restored as the said section

⁵ (2019) 20 SCC 143



applies to all cases of disobedience whether or not the effect of the disobedience is eligible of removal or reparation.

20. In the instant case, the plaintiff in the suit has claimed that she made the construction and the said license may not be revokable and in any event the plaintiff is required to be compensated for all the expenditure she had incurred for making the said shop rooms useable before the defendants (the petitioners herein) could even consider of evicting the plaintiff from the said premises. The plaintiff was successful at the interlocutory stage and was enjoying an interim order that has now attained finality. Dominion and control over the property by the plaintiff appears to have been retained till the plaintiff has been dispossessed by the defendant. Once the plaintiff is able to prove her possession and prima facie proves that her dispossession is not legal or with her consent or in accordance with law the plaintiff is entitled to restoration of possession based upon her possessory title as the possession is the ninth point in law and law respects possession over a title.

21. On a conspectus of facts as narrated above, the learned trial court granted an interim order of injunction which was later modified to status quo. Admittedly the plaintiff was in juridical possession on the



midnight of 09.02.2021 when the petitioners entered the shop rooms and took possession of the shop rooms without giving any notice to the plaintiff and in violation of the status quo order. The status quos that could be and required to preserve was the status quo that existed before this illegal act of dispossession on the part of the defendants/petitioners was accomplished during the pendency of the suit and in such view of the matter, the discretion exercised by the learned trial judge in directing the status quo ante in exercise of its jurisdiction under Rule 39 Order 2A of the CPC read with Section 151 CPC does not call for any interference.

22. At this stage, the learned DSG has made an offer of granting two shops of equivalent space to the plaintiff as a temporary measure and has assured that she would not be dispossessed of the said shops till the suit is disposed of finally. In view of the changed circumstances, the learned counsel has submitted that the plaintiff may accept the said offer. The petitioners shall provide two shop rooms of the same measurement, more or less, or of the same description to the plaintiff within three months from date, failing which it would be open to the plaintiff to approach the learned trial court for implementation of the impugned order.



23. The suit shall proceed only after the shops are allotted to the plaintiff. After restoration, it would be open for the petitioners to pray for early disposal of the suit.
24. The petition stands dismissed.
25. However, there shall be no order as to costs.

(Soumen Sen)
Chief Justice

Meghalaya
10.11.2025
"*Lam* DR-PS"