

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13160 of 2022

=====

Abhishek Anand, son of Sri Lallu Prasad, Resident of 212, Nasiruddin Ganj,
Malsalami Primary School, P.S. Malsalami, Town Patna City, District Patna,
Proprietor of M/s. Tandoor Hut, a Proprietary concern at Ground Floor,
B.S.F.C. Building, Frazer Road, P.S. Kotwali, Town and District Patna.

... .. Petitioner/s

Versus

1. The Bihar State Financial Corporation having its Office at Frazer Road, P.S. Gandhi Maidan, Town and District- Patna, through its Managing Director.
2. The Managing Director, Bihar State Financial Corporation, having its Office at Frazer Road, P.S. Gandhi Maidan, Town and District- Patna
3. The Deputy Manager, Establishment, Bihar State Financial Corporation, Frazer Road, Patna.
4. The State of Bihar through the District Magistrate, Patna.
5. The Additional District Magistrate, Law and Order, Patna.
6. The Chairman, Bihar State Financial Corporation-cum- Principal Secretary, Department of Industries, Government of Bihar-cum-, New Secretariat, Patna.
7. Sri Sandeep Poundrik, IAS, the Chairman, Bihar State Financial Corporation-cum- Principal Secretary, Department of Industries, Government of Bihar-cum-, New Secretariat, Patna.

... .. Respondent/s

=====

with
Miscellaneous Jurisdiction Case No. 2931 of 2023
In
Civil Writ Jurisdiction Case No.13160 of 2022

=====

Abhishek Anand, Son of Sri Lallu Prasad, Resident of 212, Nasiruddin Ganj,
Malsalami Primary School, P.S. Malsalami, Patna City, District Patna,
Proprietor of M/s. Tandoor Hut, a Proprietary concern at Ground Floor,
B.S.F.C. Building, Frazer Road, P.S. Kotwali, Town and District Patna.

... .. Petitioner/s

Versus



1. Sri Sandeep Poundrik, the Chairman, Bihar State Financial Corporation-cum- Principal Secretary, Department of Industries, Government of Biha, Patna.
2. Sri Dilip Kumar, the Managing Director, Bihar State Financial Corporation-Cum-Special Secretary, Secretary, Department of Industries, Government of Bihar, Patna.
3. Sri Sanjay Prasad, the Deputy Manager, In-Charge Establishment, Bihar State Financial Corporation, Frazer Road, Patna.
4. Dr. Chandra Shekhar Singh, the District Magistrate, Patna.
5. Sri Braj Kishore Lal, the In-Charge Additional District Magistrate, Law and Order, Patna.
6. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.

... .. Opposite Party/s

Appearance :

(In Civil Writ Jurisdiction Case No. 13160 of 2022)

For the Petitioner/s	:	Mr. S. D. Sanjay, Sr. Adv. Mr. Mohit Agrawal, Adv. Ms. Priya Gupta, Adv.
For the Respondent/s	:	Mr. Sheo Shankar Prasad (SC 8) Ms. Ruchika Jha, AC to SC 8
For the Corporation		Mr. Sanjay Singh, Sr. Adv. Mr. Sanjeev Kumar, Adv.

(In Miscellaneous Jurisdiction Case No. 2931 of 2023)

For the Petitioner/s	:	Mr. Priya Gupta, Adv.
For the Opposite Party/s	:	Mr. Sheo Shankar Prasad (SC8)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

28 25-11-2024

CWJC No. 13160 of 2022

Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

“i) For issuance of appropriate writ and/or direction to the respondents to unseal the leased premises of the petitioner which has been arbitrarily and mala fide sealed by the respondents;



ii) For quashing the letter of the respondents dated 21.05.2022 directing the petitioner to vacate the leased premises in the mid of the lease;
iii) For taking appropriate action against the district administration in providing force to the respondent Nos. 1 & 2 at their demand without even there being any authority for providing force in such circumstances as which is also in violation of the law laid down by this Hon'ble Court;
iv) For awarding any cost against the respondents for acting in such manner in violation of the fundamental rights of the petitioner and for any other relief(s) for which the Petitioner may be found entitled in the facts and circumstances of the present case.”

3. It is the case of the petitioner that pursuant to the tender issued by the respondents-Bihar State Financial Corporation for leasing out land situated in front of the building on Frazer Road, the petitioner has participated in the same. The petitioner being the highest bidder was selected and on 09.09.2009 the authorities have allowed the petitioner to open the Barbeque restaurant in the leased area owned by the respondent Corporation. That on 09.11.2009 the petitioner was given permission to setup a temporary structure. That the initial lease period was for five years and thereafter the same was extended from time to time. That on 17.04.2021 a fresh lease



deed was executed between the parties for the further period of six years, however as the said lease deed was not registered, the tenancy is from month to month. That the petitioner received a notice on 21.05.2022 (Annexure 5) directing him to pay the outstanding lease amounts, failing which necessary action for vacating the premises will be initiated. The petitioner has given a suitable reply to the said notice on 24.08.2022 (Annexure 6). Thereafter the respondents-BSFC has written a letter to the District Magistrate, Patna on 29.08.2022 to get the premises vacated and the District Magistrate, Patna vide order dated 31.08.2022 has directed the police personnel to see that the premises is vacated. That on 01.09.2022, the police personnel came to the site and in a high handed manner sealed the premises of the petitioner. That in spite of several requests made by the petitioner and his wife, the authorities did not pay any heed to the requests and sealed the premises. That the petitioner thereafter filed the present writ petition before this Hon'ble Court on 03.09.2022 and mention was made to take up the matter out of turn, the mentioning slip was allowed duly posting the date of hearing on 06.09.2022. However the authorities to preempt the orders likely to be passed by this Hon'ble Court came to the premises on 05.09.2022 which is Sunday with



Bulldozers and JCB machine and demolished the entire structure.

4. Learned counsel appearing on behalf of the petitioner has stated that this Court vide order dated 07.09.2022 has passed interim order directing the parties to maintain *status quo*. Thereafter the petitioner filed Interlocutory Application No. 01 of 2022 bringing to the notice of the Hon'ble High Court the subsequent events that have taken place. Learned counsel has stated that no notice for vacating the premises was given by the respondents-BSFC and without the same they have in a high handed manner sealed and demolished the leased premises. That the petitioner has paid an amount of Rs.6,00,000/- out of the total rented amount of Rs.8,84,303/- and the balance amount payable by the petitioner is Rs.3,83,447/- Learned counsel has stated that irrespective of the fact whether the petitioner was due some mounts to the BSFC or not, the authorities could not had taken law into their own hands and evict the petitioner in the high handed manner. That only with the view to preempt the order that was likely to be passed by this Hon'ble Court on 06.09.2022, the authorities have demolished the entire structure. Learned counsel has stated that the authorities do not have the power to take the possession of the subject property without



approaching the Civil Court or follow the procedure contemplated under the agreement. Learned counsel has relied on the following Judgments in support of his case:-

- “1. Amrit Varsha Hindi Dainik Vs. Bihar State Agriculture Marketing Board and another reported in (2000)2 PLJR 729.
2. Electronic Systems Punjab Ltd. Rupnagar through its MD, Shri Shok Sharma Vs. Bihar State Co-operative Union Ltd., Patna through its MD and Ors reported in (2006) 1 PLJR 432.
3. The Gait Public Library and Institute, Gardanibagh, Patna through its President Vs. The State of Bihar and Ors. reported in (1995) 1 PLJR 585.
4. Harisons Continental Private Limited, through its director, Saurav Prakash and Another Vs. State of Bihar through Principal Secretary and Ors. reported in 2022 SCC OnLine Pat 3178.
5. Anand Kishore Prasad Sinha vs. State of Bihar, through the Chief Secretary and Ors. reported in (2021) 2 PLJR 445 .
6. Bishan Das & Ors Vs. State of Punjab and Ors. reported in AIR 1961 SC 1570.
- 7.State of UP and Ors Vs. Maharaja Dharmander Prasad Singh and Ors. reported in (1989) 2 Supreme Court Cases 505.
8. Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. And Ors. reported in (1996) 4 Supreme Court Cases 144.



9. Lallu Yashwant Singh vs. Rao Jagdish Singh and Ors. reported in AIR 1968 SC 620

10. Krishna Ram Mahale (dead) by his Lrs. v. Mrs. Shobha Vankat Rao reported in (1989) 4 SCC 131.

11. Hindusthan Petroleum Corporation Ltd. v. The State of Bihar and Ors. Reported in (1996) 2 PLJR 621.”

5. In order to appreciate the law in the present issue, the passages from the above referred cases are extracts here under:-

I. The Hon’ble High Court in Amrit Varsha Hindi Dainik V. Bihar State Agriculture Marketing Board & Anr. Reported in (2000) 2 PLJR 729 has held as under:-

“19. I am of the view that the appellant is entitled to the restoration of possession of the premises in question in view of the fact that the order of eviction passed against it is an order without jurisdiction. The order of eviction dated 2-12-1997 must, therefore, be quashed. It will, however, be open to the respondent-Board to take appropriate proceeding for eviction of the appellant before the appropriate forum in accordance with law. The observations made in the judgment of the learned Judge regarding the appropriate forum where such a proceeding must be initiated, shall not stand in the way



of the respondent-Board to take a proceeding before any other forum as it may be advised, at its own risk. The question as to the forum before which the respondent-Board may seek its remedy is left open. The appellant shall be restored possession of the premises in question subject to his paying the entire arrears of rent due as on the date eviction. For the purpose of calculating the arrears of rent due, the monthly rental shall be taken to be Rs. 5560/-. Any amount paid by the appellant by way of rent to the respondent-Board shall be adjusted. It is made clear that the amount of Rs. 50,000/- deposited by the appellant by way of security shall not be adjusted, nor shall the appellant be entitled to adjustment of any claim that he may have against the State of Bihar or any of its department agency or instrumentality. The respondent-Board shall not be entitled to interest on the arrears of rent or enhanced rent, but this is without prejudice to their claim which they may agitate before the appropriate forum in accordance with law. The appellate shall tender the amount due by way of arrears of rent within a period of two months from today and shall while tendering the same annex therewith a statement showing the manner in which the arrears of rent have been calculated. If he fails to pay the entire arrears



of rent within the prescribed period, he will not be entitled to claim restoration of possession after the expiry of the period specified in this order.”

II. The Hon’ble High Court in Electronic Systems Punjab Ltd. Rupnagar through its MD, Shri Shok Sharma Vs. Bihar State Co-operative Union Ltd., Patna through its MD and Ors reported in (2006) 1 PLJR 432 has held as under:-

“1..... There is no dispute that the petitioner is a tenant of BISCOMAN. There is also no dispute that the petitioner has not paid the rents payable by the petitioner to BISCOMAN in respect of the tenanted property. At the same time there is also no dispute that as yet BISCOMAN has not initiated any proceedings under any law for eviction of the petitioner.

3. The action of BISCOMAN as well as of the District Collector, Patna as above, is unthinkable, repulsive and contrary to the basic concept of law.

4. It is now well settled in law that an action under Article 226 is maintainable against a public authority as well as against a public officer to redress an ultra vires act or acts. It is also well settled in law that compensation for damage suffered by a



citizen as a consequence of an ultra vires act is recoverable from the public authority as well as from the public officer responsible for the act. The acts complained of in the instant case as mentioned above have no sanction of law and accordingly they are ultra vires acts. The question is what would be the quantum of damages, apart from putting back the clock to wipe off the ultra vires acts complained of. The mental agony suffered by the petitioner in view of the acts complained of cannot be compensated in money. The acts complained of are so heinous in nature.”

III. The Hon’ble High Court in the Gait Public Library and Institute, Gardanibagh, Patna though its President Vs. The State of Bihar and Ors. reported in (1995) 1 PLJR 585 has held as under:-

“12. In the case of Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy, 51 Ind App. 293 at page 299 it was held by the Privy Council that “In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court”.

13. In the case of Krishna Ram Mahale (dead) by his LRs. v. Mrs. Shobha Venkat



Rao, (1989) 4 SCC 131: A.I.R. 1989 S.C. 2097, it was held that it is well settled 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.

14. In the case of State of U.P. v. Maharaja Dharmander Prasad Singh etc., (1989) 2 SCC 505 : A.I.R., 1989 S.C. 997, it was held that though in exercise of power under Section 225 of the Constitution of India the Court cannot go into question as to whether forfeiture and cancellation of the lease is valid or not, it was observed that a lessor, with the best of title has no right to resume possession extrajudicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression re-entry in the lease deed does not authorise extrajudicial methods to resume possession. Under law, the possession of lease, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law.

.....



25. From the terms of the lease it is clear that there is provision of taking possession on certain contingencies and as such Rule 22 applies. The petitioner has objected to taking of the possession by filing a petition and in that view of the matter the respondent can taken possession under the order of competent Civil Court. They cannot take forcible possession.”

IV. The Hon’ble High Court in Harisons Continental Private Limited, through its director, Saurav Prakash and Another Vs. State of Bihar through Principal Secretary and Ors. reported in 2022 SCC OnLine Pat 3178 has held as under:

“49. The Hon’ble Delhi High Court was of the view that it was not concerned with the title of the property in question and on noticing the fact that the respondent no. 3 & 4 were inducted into possession in connivance with police and the petitioner was thrown out of the house where she was living for about four years, the court took a view that it has quite and ample powers to pass appropriate orders including orders for restoration of possession. The relevant observations of the Hon’ble Delhi High Court are quoted hereunder for a ready



reference:—

“..... 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 FIR, which may be registered, and that the law will have its own course after registration of the FIR 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 merit 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”

51. In the case of Waf Alaulad v. Sundardas Daulatram and Sons reported in 1996 SCC OnLine All 176 = AIR 1996 All 355, the Hon’ble Allahabad High Court observed as under:—

(21.) As regards the third preliminary objection it may be mentioned that Supreme Court in Krishna Ram Mahale v. Mrs. Shobha Venkat Rao, (1989) 4 SCC 131 : AIR 1989 SC 2097 (supra), relevant extract from which has been reproduced before, has held that no person can forcibly be dispossessed from property even by the owner except by recourse to law. If a person is sought to be dispossessed by brute force he has a right to approach this Court, to protect his possession and it is the duty of this Court to issue appropriate order, direction or writ in the nature of mandamus to the Government to protect the possession of the property of such a person till he is dispossessed therefrom through a Court. In the instant case period of lease expired on



31-12-1994. But the tenants have a right to continue in its possession till they are evicted through Court. They thus have the right to approach the Court to protect their possession of the property. Their writ petition as such cannot be said to be not maintainable. The third preliminary objection is also rejected.....” 54. In the case of Bishan Das v. State of Punjab (AIR 1961 SC 1570) which has been affirmed in State of UP v. Maharaja Dharmander, Prasad Singh v. Maharani Raj Laxmi Kumari Devi reported in (1989) 2 SCC 505 : AIR 1989 SC 997, their Lordships held that possession of the lessee, even after the expiry of lease or its termination is juridical in nature and forcible dispossession is prohibited and the lessee cannot be dispossessed otherwise than in due course of law. The same principle has been followed in the case of Krishna Ram Mahale v. Shobha Venkat Rao reported in (1989) 4 SCC 131 : AIR 1989 SC 2097. Relying on the principles of Lallu Yeshwant Singh (supra) and Midnapur Zamindary (1923-24) 51 IA 293 (PC), the Hon’ble Supreme Court held 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. 55. In the case of Samir Sobhan Sanyal v. Tracks Trade Pvt. Ltd. reported in AIR 1996 SCW 2539, the Hon'ble Supreme Court did not approve the eviction of the appellant from the demise premises without taking recourse to any process of law even without deciding the question whether the appellant is entitled to remain in possession. The Hon'ble Supreme Court directed the respondents to put the appellant back in possession within 24 hours. The rationale behind such an order was explained by the Hon'ble Supreme Court saying that "The Court cannot blink at their unlawful conduct to dispossess the appellant from demised property and would say that status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for amarchy...."

65. If this Court would give acceptance to such highhanded action, in the words of the Hon'ble Supreme Court in the case of Samir Soban Sanyal (supra), there will be no respect of rule of law and unlawful elements shall take hold of the due process of law for



ransom and it would be a field day. In case of this nature which is akin to grabbing of the property and dispossession of an occupant by unlawful means, relegating the petitioner to a civil suit to get back his possession would only encourage more and more such acts of high handedness and there will be no respect for the rule of law. Such unlawful means must be discouraged. Thus, this Court being a constitutional Court is required to exercise its extraordinary writ jurisdiction in the facts of the present case. The petitioners have made out a case for grant of reliefs.

66. In result, this writ application is allowed. The Superintendent of Police, Patna (respondent no. 4) and the officer in-charge, Kotwali police station, Patna (respondent no. 6) are directed to take back the possession of the key from the respondent no. 7 forthwith and immediately remove the lock put on the main gate of the premises in question and hand over the possession of the same to the petitioner. If respondent no. 7 does not cooperate the respondent no. 4 and 6 shall break open the unauthorised lock.

V. The Hon'ble High Court in Anand Kishore Prasad Sinha vs. State of Bihar, through the Chief Secretary and Ors.



reported in (2021) 2 PLJR 445 has held as under:-

“24. This Court, is of the view that who has got right and title of the land and who may legally possess the disputed property or can continue with the possession thereof may only be decided in an appropriate proceeding by a competent court of law where both the parties may adduce their respective evidences.”

VI. The Hon’ble Supreme Court in Bishan Das & Ors Vs. State of Punjab and Ors. reported in AIR 1961 SC 1570 has held as under:-

“13. As to the second argument, it is enough to say that it is unnecessary in this case to determine any disputed questions of fact or even to determine what precise right the petitioners obtained by the sanction granted to their firm in 1909. It is enough to say that they are bona fide in possession of the constructions in question and could not be removed except under authority of law. The respondents clearly violated their fundamental rights by depriving them of possession of the dharmasala by executive orders. Those orders must be quashed and the respondents must now be restrained from interfering with the petitioners in the management of the dharmasala, temple and shops. A writ will now issue accordingly.”



VII. The Hon'ble Supreme Court in State of U.P. And Ors. v. Maharaja Dharmander Prasad Singh and Ors. reported in (1989) 2 SCC 505 has held as under:-

“30. A lessor, with the best of title, has no right to resume possession extra judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression “re-entry” in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and governmental authorities should have a “legal pedigree”. In Bishan Das v. State of Punjab this Court said: (SCR pp. 79-80) “We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order. Before we part with this case, we feel it our duty to say that the executive action taken in



this case by the State and its officers is destructive of the basic principle of the rule of law.”

31. Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.”

VIII. The Hon’ble Supreme Court in Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. And Ors. reported in (1996) 4 Supreme Court Cases 144. has held as under:-

“6. It would thus be clear that without any decree or order of eviction of the appellant from the demised premises, he has been unlawfully dispossessed from the premises without any due process of law. The question, therefore, is: whether he should be allowed to remain in possession till his application under Order 21, Rules 98 and 99 is adjudicated upon and an order made. Though the learned counsel for the first respondent and also for the third respondent, who is one of the transferees from the sixth respondent, sought to contend that the appellant has no right to



remain in possession after the lessee, M/s India Foils Ltd. Had admitted by a resolution that the appellant has no right to remain in possession, we are not impressed with the arguments. At this stage, we are only concerned with his admitted possession of the demised premises. What rights would flow from a contract between him and his employer is a matter to be adjudicated in his application filed under Order 21, Rules 98 and 99, CPC. At this stage, it is premature to go into and record any finding in that behalf. The learned counsel for the first respondent also repeatedly sought to bring to our notice that on account of the orders of the Court Officer passed by the High Court the maintenance cost has been mounting up due to the delay in disposal of the proceedings in various courts. Even with regard to that, we are not impressed with the same. Since the letter of the law should strictly be adhered to, we find that high-handed action taken by Respondents 1, 3 and 6 in having the appellant dispossessed without due process of law, cannot be overlooked nor condoned. The court cannot blink at their unlawful conduct to dispossess the appellant from the demised property and would say that the status quo be maintained. If the court gives acceptance to such high-handed action, there will be no



respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary.”

IX. The Hon’ble Supreme Court in Lallu Yashwant Singh v. Rao Jagdish Singh & Ors. reported in AIR 1968 SC 620 has held as under:-

13.We are unable to appreciate how this decision assists the respondent. It was not a suit under Section 9 of the Specific Relief Act. In Lillu bin Raghushet v. Annaji Parashram it was recognised that if there is a breach of the peace in attempting to take possession, that affords a ground for criminal prosecution, and the attempt is successful, for a summary suit also for a restoration to possession under Section 9 of the Specific Relief Act 1 of 1877 Dadabhai Narsidas v. Sub-Collector of Broach 10. In Bandu v. Naba it was observed by Sargent, C.J., as follows:

“The Indian legislature has, however, provided for the summary removal of any one who dispossesses another, whether peaceably or otherwise than by due course of law; but subject to such provision there is no reason for holding that the rightful owner so



dispossessing the other is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. This would also appear to be the taken by West, J., in *Lillu v. Annaji*¹.”

X. The Hon’ble Supreme Court in *Krishna Ram Mahale V. Shobha Vankata Rao* reported in (1989) 4 SCC 131 has held as under:-

“8. Mr Tarkunde, learned counsel for Defendant 3, the appellant herein, rightly did not go into the appreciation of the evidence either by the trial court or the High Court or the factual conclusions drawn by them. It was, however, strongly urged by him that the period of licence had expired long back and the plaintiff was not entitled to the renewal of licence. It was submitted by him that in view of the licence having come to an end, the plaintiff had no right to remain in charge of the business or the premises where it was conducted and all that the plaintiff could ask for was damages for unlawful dispossession even on the footing of facts as found by the High Court. We find ourselves totally unable to accept the submission of Mr Tarkunde. It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be



dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in Lallu Yeshwant Singh 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 Co. Ltd. v. Naresh Narayan Roy where it has been observed (p. 208):

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

XI. The Hon'ble High Court in Hindustan Petroleum Corporation Ltd. v. The State of Bihar and Ors. reported in (1996) 2 PLJR 621 has held as under:-

54. The law on this point was settled long ago by the Privy Council and also in the decision of the Constitution Bench of the Supreme Court in the case of Bishan Das v. The State of Punjab, reported in AIR 1961 SC 1570. Here this Court can do no better than quote from paragraph 14 (page 1575 of the report) the relevant excerpts from the judgment in Bishanda's case (supra):— “The petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court



obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property.”

55. In *Lallu Jaswant Singh v. Rao Jagdish Singh*, reported in AIR 1968 SC 620, the Hon’ble Judges of the Supreme Court expressly approved the enunciation of law in this aspect by Bombay High Court in *K.K. Verma* (AIR 1954 Bom 358) (supra) and also quoted with approval the legal principles settled by the Privy Council in *Midnapur Zamindary Co. Limited* (51 Ind App 243) as follows:—

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

56. The law declared by the Full Bench of the Allahabad High Court in *Yar Mohammad v. Lakshmi Das* reported in AIR 1956 All 1 (FB) was also approved in *Lallu*



Jaswant Singh (AIR 1968 SC 620) (supra). The Full Bench of the Allahabad High Court observed: “Law respects possession even if there is no title to support it. It will not 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.”

57. The ratio of Bishan Das (AIR 1961 SC 1570) (supra) has been affirmed in State of U.P. v. Maharaja Dharmendar Prasad Singh reported in AIR 1989 SC 997. In paragraph 15 of the report at p. 1004, it has been held that the possession of the lessee, even after the expiry of the lease or its termination is juridical in nature and ‘forcible dispossession is prohibited’ and the ‘lessee cannot be dispossessed otherwise than in due course of law’.

58. The same principle is echoed in the case of Krishna Ram Mahale v. Mrs. Shobha Venkat Rao reported in AIR 1989 SC 2097. Relying on the principle of Lallu Jaswant Singh (AIR 1968 SC 620) (supra), and Midnapur Zamindary (51 Ind App 243) (PC) (supra), the Supreme Court held that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, ‘he cannot be dispossessed by the owner of the property



except by recourse to law' (para 8, page 2100 of the report).

59. In the recent judgment of the Supreme Court in the case of Samir Sobhan Sanyal v. Tracks Trade Pvt. Limited reported in 1996 AIR SCW 2539, the Supreme Court did not approve of the eviction of the appellant from the demised premises without taking recourse to any process of law even without deciding the question whether the appellant is entitled to remain in possession. The Hon'ble Supreme Court directed the respondents to put the appellant back in possession within 24 hours. The rationale behind such an order was explained by the Supreme Court as follows:—

“The Court cannot blink at their unlawful conduct to dispossess the appellant from demised property and would say that the status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field-day for anarchy. Due process of law would be put to ridicule in the estimate of law abiding citizens and rule of law would remain a mortuary.”

6. Per contra the learned counsel appearing on behalf



of the respondents has stated that the prayer sought for in the present writ petition has become infructuous. Mr. Sanjay Singh, learned Senior Counsel appearing on behalf of the respondents-BSFC has stated that the petitioner had violated the terms and conditions of the lease agreement and constructed the permanent structure by encroaching the footpath and the setback area of the respondents building. Further it is stated that in case the petitioner has any grievance his remedy is to approach the Civil Court and not this Court, further there is arbitration clause which can be invoked by the petitioner. Learned counsel for the respondents has stated that the citations relied by the petitioner are not applicable to the facts of the present case. That the petitioner instead of paying the monthly lease amounts regularly has not paid the same for considerable period and the total **lease** amounts due as on date is approximately Rs.3,83,447/-. Further it is stated that the petitioner is chronic defaulter and therefore, no equities lie in his favour. It is further stated that the building is required for their own bona fide needs and for that purpose the eviction of the subject premises was done. Further it is stated that the area which was leased out to the petitioner is falling under the setback area and therefore it is not possible for the authorities to put the petitioner back in possession of the subject



property. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. This Court vide order dated 07.09.2022 has directed all the respondents to maintain *staus quo*. Thereafter the Hon'ble Division Bench of this Court on 29.11.2022 has passed the following orders:-

2. Having heard learned counsels for some time, especially the learned counsel for the State, in the tentative view of the Court, the action/order passed by the District Administration and BSFC is thoroughly beyond jurisdiction. Learned counsel for the State was unable unable to assist the Court on such issue and thus the Court is constrained to direct for the personal appearance of the District Magistrate, Patna; the Senior Superintendent of Police, Patna and the Additional District Magistrate, Law and Order, Patna who has issued order dated 31.08.2022 to be present in Court at 10:30 a.m. on 1st December, 2022 to explain their conduct and action. The entire records relating to the said process would also be produced before the Court. Further, the Managing Director of the BSFC shall also be present along with entire records on the next date.”

On 01.12.2022 the following order was passed:-



5. At this juncture, Mr. Lalit Kishore, learned Advocate General interjected and submitted that he is also aware of the position and would like to discuss it with the officers concerned and then come before the Court for an appropriate response in the peculiar facts and circumstances of the present case. The Court finds such prayer of the learned Advocate General to be reasonable.

6. Accordingly, as jointly prayed for, the matter be listed on 7th December, 2022, retaining its position.”

Later on 07.12.2022, the Hon’ble Division Bench has passed the following order:-

2. Learned Advocate General appearing on behalf of the authorities submits that as a way out for an act done which may not strictly stand judicial scrutiny, awarding some compensation for the actual loss suffered by the petitioner would serve the purpose.

3. Having considered the matter, the Court would require the parties to bring on record their proposal in this regard so that the Court is able to take a call specially in view of the stand taken on behalf of the petitioner that not only compensation but restoration is also required in the facts and circumstances of the



present case.”

8. After hearing the parties at length, this Court in order to balance the equations and grant the relief to the best extent possible has directed the respondents to bring on record the permission letter and sanctioned building plan approved by the Patna Municipal Corporation in respect of the subject premises. The authorities have filed a supplementary counter affidavit stating that they could not locate the subject premises and filed the sketch map showing the dimension of the building and the setback area.

9. Admittedly in the present case, the subject property is abeting Frazer Road and the open space between the footpath and the building of approximately 24”/25” is let out to the petitioner.

10. Admittedly in the present case, the authorities did not have any power to evict the petitioner from the subject premises in a high handed manner without taking recourse to the law. The action of the respondents has to be termed as illegal, bad and contrary to the well settled principles of law. The only question that falls for consideration before this Court at this juncture is as to whether the prayer sought for by the petitioner to restore his premises in the subject property can be granted or



not. After giving a considerable thought to the entire issue involved, this Court is of the opinion that the ends of Justice would be met if the damages to the tune of Rs.10,00,000/- is granted to the petitioner for illegal demolition and eviction from the subject premises. Even though the learned counsel for the petitioner has stated that he has suffered huge loss due to illegal demolition, loss of business and loss of investments made over the year for decoration, furniture and equipment etc, this Court is not inclined to go into the same as they are all disputed questions of fact which cannot be gone into under Article 226 of the Constitution of India. If the petitioner is so advised, he is free to approach the appropriate forum/Civil Court for seeking damages and lead evidence to substitute his claim before the said forum. The Civil Court is a proper forum to decide on the question as to whether damages can be granted to the petitioner or not.

11. Having regard to the undertaking given by the learned Advocate General before this Court on 07.12.2022, this Court is of the prima facie opinion that the ends of Justice would be met if an amount of Rs.10,00,000/- is granted to the petitioner as compensation payable by the respondents-BSFC. The amount shall be paid as expeditiously as possible preferably



within a period of four weeks from the date of receipt of the copy of this order. The authorities are free to deduct the amounts of Rs.3,83,447/- which are the arrears of rent and pay the balance amount to the petitioner.

12. That in so far as the prayer sought for by the petitioner to put him back to the petitioner is concerned, this Court is not inclined to grant the same as the entire structure which was leased out to the petitioner has already been demolished. Further it is to be noted that the said restaurant which was run by the petitioner is located in the setback area and abeting the footpath. Further it is to be noted that as per the rule and regulations of the Fire Department, the four sides of the building from any constructions or obstructions, more specifically, the setback area should be free. As seen from the photos as well as sketch map filed by the respondents, the subject premises in the present writ petition is falling in the front setback area abeting Frazer Road.

13. Having regard to the above facts and circumstances, the present writ petition stands partly allowed to the extent indicated above.

MJC No. 2931 of 2023

14. In view of the order passed in CWJC No. 13160



of 2022, the contempt stands closed.

(A. Abhishek Reddy , J)

Bhardwaj/-

U			
---	--	--	--

