

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL WRIT

Before Eric Weston, C. J., and Kapur, J.

KHUSHAL SINGH AND ANOTHER,—Petitioners

versus

**SHRI RAMESHWAR DAYAL, DEPUTY COMMISSIONER,
DELHI AND OTHERS,—Respondents**

1952

April, 1st

Civil Writ No. 3-D of 1952

Constitution of India—Article 226—Powers under—Officers of the State acting unreasonably, arbitrarily and in a manner not contemplated by law—Whether High Court should interfere in the exercise of its powers under Article 226 of the Constitution—Person dispossessed by such action—Whether can be restored in possession—Affidavits filed by third parties—Whether should be relied upon by the State Officials.

The petitioners were dispossessed from a shop by the police under the orders of a magistrate at the instance of another person who was put in possession. The magistrate could not state the law under which he took the action. The petitioners moved the High Court under Article 226 of the Constitution of India, for an order directing the respondents to restore the possession of the shop to them. The question arose whether a writ could issue in such circumstances.

Held, that there was no justification for the magistrate to have acted in the manner that he did and to have dispossessed the petitioners who were in possession of the premises under a right or a mere colour of a right. Officers of the State can take action under some law or some rule or order lawfully made under a statute or law in force. The officers of the State complained against have acted unreasonably, arbitrarily and in a manner not contemplated by law and the illegalities are so gross that under Article 226 of the Constitution the order dispossessing the petitioners must be set aside and as a consequence thereof possession must be restored to them.

Held also, that if there was no lawful authority or legal order by which the petitioners could be dispossessed, the mere fact that possession has been given to somebody else cannot be a ground for not setting aside an illegal order and to direct the undoing of an act which has been done through a manifest illegality.

Held further, that the State should not take shelter behind affidavits made by third parties and when statements of facts are made in affidavits, the State officers, with all the resources of the State at their disposal, should try to reply to the facts stated on oath by the petitioners in regard to their rights rather than rely upon something which is stated by third parties who might never have been made parties to the proceedings.

Petition under Article 226 of the Constitution of India, praying as under :—

- (1) *That this Hon'ble Court be pleased to issue an order to respondents Nos. 1 and 2 that they do put the petitioners in possession of the shop and not to interfere in their possession except in due course of law.*
- (2) *That this Hon'ble Court be pleased to issue a rule to the respondents directing them not to allot the shop or otherwise part with its possession in favour of respondent No. 3 or any other person till the final disposal of the petition.*

GURBACHAN SINGH, for Petitioners.

BISHAMBAR DAYAL and SHIV CHARAN SINGH, for Respondents.

ORDER.

Kapur, J. — KAPUR, J. This is a rule issued against Mr. Rameshwar Dayal, Deputy Commissioner, Delhi, and Mr. J. N. Shingal, Magistrate, 1st Class, Delhi, to show cause why a writ of mandamus should not issue to them to restore the possession taken by them from the petitioners of shop No. 284, situate in Chandni Chowk, Delhi.

In support of the petition one of the petitioners put in an affidavit and in reply to this affidavit a document purporting to be an affidavit has been filed by Mr. Shingal. A joint written statement on behalf of Mr. Rameshwar Dayal and Mr. Shingal has also been put in. It is unfortunate that

neither the affidavit nor the written statement is verified in the manner that these documents are required to be verified nor are the facts stated in the petitioners' affidavits definitely denied or clearly admitted and it is not quite clear what the version of these public officers is. According to the affidavit of the petitioners, they arrived from Rawalpindi in the month of September, 1947, and occupied shop No. 284, which was lying vacant at the time and possession of which had been given up by respondent No. 3, Hafiz Mohammad Usman. They took the shop on lease from Qamar-ud-Din, the owner of the shop—Hafiz Mohammad Usman, respondent No. 3, being only the tenant—for a period of one year at Rs. 130 per mensem. Certain other facts are proved by the documents placed on the file by Hafiz Mohammad Usman and by the petitioners, although they are not specially mentioned in the petition of the petitioners itself. On the 6th October, 1947, Lakhmir Singh filed, what is termed, an occupation report in regard to this shop in which he had shown that he had taken possession of this shop on the 28th September, 1947.

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It appears that some time later the petitioners apprehended that the shop in dispute was going to be allotted to somebody else and they, therefore, took an appeal to the District Judge, under section 6(2) of the East Punjab Ordinance (Ordinance IV of 1947) as extended to Delhi under section 7 of the Delhi Laws Act, and section 3 of Ordinance XXIII of 1947. The grounds taken in this appeal are of some importance. The petitioners, who were appellants there, alleged that the shop was vacant when they took possession, that they had got into contact with the proprietor and had taken it on rent at Rs. 130 per mensem the very next day, thus the proprietor accepted them as tenants and that as a precautionary measure they made an application to the Custodian, Evacuee Property, on the 6th October, 1947 (the applications I have referred to above), that the proprietor had started asking them for a *pagree* (premium), and, therefore, the order passed by the Custodian, probably of allotment to somebody

Khushal Singh else, was illegal, and they prayed that the order and another of allotment be set aside. They mentioned that they had not been able to get a copy of the order of the Custodian against which they wished to appeal in spite of every effort that they had made. This matter came up before the learned District Judge on the 20th February 1948, and he dismissed the appeal. I give the order of the learned District Judge *in extenso* :—

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“ Mr. Ahuja states that although the Custodian intended to take possession of the property, he is no longer interested in it, because the owner Mohammad Usman has returned and an order has been made restoring the property to him. According to Mr. Ahuja, there are no proceedings pending before the Custodian now for ejecting the appellant from the premises.

Appellant's counsel is not very clear regarding his grievance. The grounds of appeal do not mention that any attempt to eject him was ever made. If the appellant is a tenant under Usman and there is some dispute between them, that can only be settled in a proper Court.

The present appeal is infructuous and is dismissed.”

On the 1st December 1948, the Assistant Custodian confirmed the occupation in favour of Khushal Singh, one of the petitioners, presumably under section 6(2)(b)(iii) of the Act of 1947, as it was before the amendment. On the 13th December 1948, Mr. S. P. Advani made an order on an application made under Rule 21 of the Government of India (Delhi Province Evacuee Administration of Property) Rules, 1948, by Hafiz Mohammad Usman. This order shows that the present petitioners then claimed before the Authorised Deputy Custodian that they had taken the premises on lease from the landlord Sheikh Qamar-ud-Din.

The contention of Hafiz Mohammad Usman then was that the present petitioners were appointed as care-takers of the shop which had been sealed by the Custodian during the disturbances and that Lakhmir Singh had broken that seal and had taken illegal occupation of the same, and he prayed that possession be restored to him. The petition was dismissed and the order shows the following:—

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- (i) Possession had not been taken by the present petitioners as *Sapurdars* or care-takers. There is nothing on the record to show that the Custodian had sealed the premises.
- (ii) The Superintendent of Police had sent a report, dated the 3rd December 1948, that there were no papers with him showing that the present petitioners had broken open the shop nor was it clear that there was any resealing of the shop thereafter.
- (iii) The order goes on to say :—
- “ * * still I am afraid the Custodian cannot assist the applicant because the property is not evacuee property under Act XIV of 1947, and it never vested in the Custodian before the alleged trespass. I, therefore, decide against the applicant on the first two points.”
- (iv) It may be stated here that the applicant is not an evacuee and the stand taken by the Custodian throughout has been quite consistent. At one stage, no doubt, the Custodian intended to take possession of this shop but finding its owner to be non-evacuee he washed his hands off at the earliest opportunity. The property being non-evacuee, the Custodian is not even party to the suit filed against the applicant who should rise or fall with the action pending in the Civil Court.

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(v) Referring to the question of resealing he said:—

“It would not only smack of ‘dog in the manger’ policy, but it would be totally illegal for this office to deal with the property which is not evacuee property now.”

Those two orders, dated the 1st December 1948, and the 13th December 1948, show that the Custodian was not treating this property as evacuee property and that there was no resealing. On the other hand, the occupation of the petitioners was confirmed by the former order.

There is an order of Mr. H. K. Chaudhry, dated the 5th July 1949, a certified copy of which is put on the record by the petitioners which shows that Sheikh Qamar-ud-Din made an application to the Custodian saying that he was the owner of the properties including the property now in dispute, that he was not an evacuee, that there were Mohammadan and non-Mohammadan tenants of the property and that he had accepted the then occupants of the various properties as tenants. A report was called for from the Property Section and on the basis of this report the Custodian held that Sheikh Qamar-ud-Din was not an evacuee, that he had been paying rent and taxes, that he was the owner of the property in dispute and that he had accepted the occupants of the various properties as tenants, and the Custodian ordered that these persons should be deemed to be tenants under Sheikh Qamar-ud-Din. It was also stated in this order that by a Government of India notification, dated the 28th May 1949, the Custodian had declared himself absolved of all responsibilities in respect of properties in which the tenancy rights only vested in him, and he ordered rents of these properties to be paid over to Sheikh Qamar-ud-Din.

There is one other proceeding which may now be mentioned. On the 13th December 1947, the present petitioners brought a suit for injunction

against Sheikh Qamar-ud-Din and Hafiz Moham-Khushal Singh
 mad Usman. They obtained a temporary injunction and another
 tion. The suit was compromised and withdrawn. v.
 The parties have given different versions in regard Shri Ramesh-
 to what the compromise was. In paragraph 4 of war Dayal,
 the affidavit the petitioners say that the compro- Deputy Com-
 mise was that they would continue as tenants and missioner,
 Sheikh Mohammad Usman would be paid compen- Delhi and
 sation for loss of business from September 1947, up others
 to the date of the compromise, but the compro-
 mise was not recorded in so many words and all that was recorded was that the
 suit would be withdrawn and the parties would bear their own costs. In the affida-
 vit of Hafiz Mohammad Usman, respondent No. 3, it is stated that the suit of the petitioners was dis-
 missed and the injunction granted by the Court, therefore, automatically lapsed, and, therefore, the
 order of eviction of the petitioners and of restoration of possession to him remained in force and
 was executed on the 27th February 1952. Mr. Shingal in his affidavit has mentioned that this
 suit was dismissed, and that respondent No. 3's representation, presumably to him, showed that
 the Custodian's order to deliver possession to respondent No. 3 with police help was being flouted
 by the petitioners and, therefore, "the eviction notice now complained of" was sent with the direc-
 tion that the petitioners should remove their goods to an alternative accommodation on Qutab Road.

In December 1950, the petitioners got a notice from the Custodian to appear before him and there they learnt that Hafiz Mohammad Usman had applied for the property to be declared evacuee property and that proceedings on that application were still going on. The written statement of respondents Nos. 1 and 2 on this question states, "Para 5 of the application is not admitted for want of knowledge". Hafiz Mohammad Usman has admitted the correctness of this statement, but he goes on to say that the landlord, Sheikh Qamar-ud-Din, had been declared an evacuee and is now in Pakistan. This is not proved by any order or a copy thereof produced nor is it admitted by the petitioners.

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In paragraph 6 of the affidavit of the petitioners it is stated that they heard nothing about these proceedings but on the 26th February 1952, at 8 p.m., they were informed that a Sub-Inspector of Police visited their shop for purposes of serving some notice which had been issued to them by respondent No. 2. The affidavit further shows that they tried to get into contact with the Sub-Inspector immediately after and also on the morning of the 27th, but were unable to do so and they then went to the house of respondent No. 2, Mr. Shingal, at about 9.30 a.m., on the 27th February and they were told that the notice had been issued under the orders of respondent No. 1, Mr. Rameshwar Dayal, and that the petitioners were to remove their goods by 10 a.m., on that very day, i.e., within half an hour, otherwise police force would be used and the shop would be forcibly taken possession of. A request, which was made to respondent No. 2 to stay action so that legal advice may be taken, was refused. When asked under what law they were being ejected, respondent No. 2, according to the affidavit of the petitioners, stated, "Local Administration Law". The petitioners then went to the house of the Chief Commissioner, Delhi, but he was not at home and they saw the Home Secretary of the Delhi State who stated that he knew nothing about the matter and that it was being dealt with by respondent No. 1. They then came to Chandni Chowk and there they found that the police were "occupying every space in the bazar and seemed to number quite a few hundreds". The locks of the shop were broken open and preparations had been made for removing the goods which were worth about a lac of rupees. Trucks were standing and labourers with baskets were also there and nobody was permitted to go near the place. The notice for ejection was served on Lakhmir Singh at 12.15 on that day in the afternoon. The petitioners then went to the house of respondent No. 1 who kept them waiting till 3 p.m. They then sent in an application to respondent No. 1 through the orderly of respondent No. 1 and this application was returned at 3.15 p.m., with the remark, "To Shri Shingal". By that time the shop had been taken possession of and the peti-

tioners had been dispossessed. The version given in the written statement of respondents Nos. 1 and 2 is contained in paragraphs Nos. 6, 7, 8, 9 and 10, which to say the least is most uninformative; facts are neither clearly brought out nor allegations made by the petitioners clearly denied nor is it stated what the version of respondents Nos. 1 and 2 is. An affidavit has been filed by Mr. Shingal, which again is as perfunctory as it possibly could be and does not state what, according to this gentleman, actually happened. The affidavit begins as follows :—

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“That on the basis of information given to me, the facts of the case are as follows :—”

In the affidavit of the petitioners certain things are alleged to have been said or done by Mr. Shingal himself. In regard to these, Mr. Shingal could not possibly say that these were facts which were based on information given to him. There is no specific denial of the statements made by the petitioners or ascribed by them to Mr. Shingal. It is not stated where the information was obtained from nor whether the information was given to him orally or was derived from documents and what those documents were. What he stated is contained in paragraphs 10, 11, 12 and 13 which I quote in extenso :

“10. That on respondent No. 3's representation that Custodian's orders to deliver possession of the premises to respondent No. 3, with police help was being flouted by petitioners, eviction notice now complained of was sent to the petitioners to shift to alternative accommodation on Qutab Road shopping centre on 27th of February 1952, at 10 a.m.

11. That on the 27th of February, the petitioners at first wanted to offer resistance, but subsequently agreed to vacate and themselves removed their goods to an upper flat close by.

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12. That under the circumstances, respondents Nos. 1 and 2 have acted bona fide and lawfully in the discharge of their official duties.

13. That the petitioners were rank trespassers and no fundamental rights of theirs have been infringed."

The question to be decided in this case is whether the action, which has been taken by Mr. Shingal, can be supported by any law, rule or lawful order. It was not possible to find out from the affidavits as to what exactly the position of the State was, and as I have said, the affidavit put in by Mr. Shingal and the written statement put in by Mr. Rameshwar Dayal and Mr. Shingal are vague and do not show whether they have acted in accordance with any law or any direction of any higher authority or why and under what authority they took this action even if the petitioners are "rank trespassers". The notice which was issued to the petitioners and which is stated to have been served at 12.15 afternoon, on the 27th February, after the Police had broken open the locks is as follows :—

"Whereas you have been occupying shop No. 184, Chandni Chowk, Delhi, without any title, right, claim or authority as a rank trespasser and whereas it has been ordered that you, who have trespassed upon the said shop, be removed to Qutab Road shopping Centre, Qutab Road, Delhi.

1, J. N. Shingal, P.C.S. (R), Officer on Special Duty, (Rehabilitation) and Eviction Magistrate, Delhi State, having been vested with the said powers, hereby direct and order that you should remove and shift yourself to the above-mentioned place on 27th February 1952, at 10 a.m.; otherwise you will be forcibly removed.

You have already been given both oral and written notices about this previously.

Given under my hand and the seal this day
26th February, 1952, at Delhi.

(Sd.) J. N. SHINGAL,

Officer on Special Duty (Rehab.)
and Eviction Magistrate, Delhi.

* * * * *

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This document does not show as to what is the authority under which Mr. Shingal was acting. He calls himself "Officer on Special Duty (Rehabilitation) and Eviction Magistrate". It is not stated under what Act and under what authority this office was created and under what law he was ordering the eviction of the petitioners. In the seal which has been put on the order there is a mention of "Eviction Magistrate", but what exactly this signifies is not quite clear. When asked as to the authority under which Mr. Shingal was acting, the learned Standing Counsel was unable to quote any except make a vague kind of reference to another Act which deals with acquisition and requisitioning of property in Delhi State, which of course has no relevancy at all to the controversy before us.

It is not necessary for us to decide as to whether the petitioners are in lawful occupation of the property in dispute or not. They have stated in the affidavit, which is not controverted by any reliable evidence, that their occupation was confirmed on the 1st December 1948, and that when Hafiz Mohammad Usman made an application, the Custodian on the 13th December 1948, passed an order saying that the property was not an evacuee property, it had never been sealed and the petitioners were not care-takers. And then there is an order of the 5th July 1949, passed on an application of Sheikh Qamar-ud-Din for restoration of the property which shows that Sheikh Qamar-ud-Din accepted the occupants, including the petitioners, as tenants and that the property had not been declared to be an evacuee property.

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 and another placed on the file certain uncertified copies of
 v. orders of Mr. Lobo Prabhu which seem to suggest
 Shri Ramesh- that restoration of possession was ordered on the
 war Dayal, 18th November 1947. To whom the possession
 Deputy Com- was to be restored is not clear from these copies.
 missioner, It may have been to Hafiz Mohammad Usman or
 Delhi and may not have been, but assuming that it was to
 others Hafiz Mohammad Usman, those orders were of
 _____ November 1947, and might well be taken to have
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 passed by the Custodian in December 1948, and
 July 1949. In this connection I have to say that
 respondents Nos. 1 and 2 have relied upon the affi-
 davit of respondent No. 3 in their written state-
 ment. I do not know whether the State should
 in cases of this kind take shelter behind affidavits
 made by third parties and I should have expected
 that when statements of facts are made in affida-
 vits, the State Officers, with all the resources of the
 State at their disposal, would try to reply to the
 facts stated on oath by the petitioners in regard to
 their rights rather than rely upon something which
 is stated by third parties who might never have
 been made parties to the proceedings.

The question then is whether a writ can issue
 in circumstances such as these. It is not denied
 that the petitioners were in possession of the pro-
 perty in dispute under a right which they have
 mentioned in their affidavit. It may be that they
 were in possession under a mere colour of right,
 but what we have to see in this case is that they
 have been dispossessed by officers of the State
 from certain property and whether that removal
 or dispossession can be justified. In *Eshugbayi
 Eleko v. Officer Administering the Government of
 Nigeria and another* (1), Lord Atkin observed as
 follows :—

“ In accordance with British Jurisprudence
 no member of the executive can inter-
 fere with the liberty or property of a
 British subject except on the condition

(1) A.I.R. 1931 P.C. 248 at p. 252

that he can support the legality of his action before a Court of justice. And it is the tradition of British Justice that Judges should not shrink from deciding such issues in the face of the executive."

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As far as I can see, no justification seems to have been made out by Mr. Shingal to have acted in the manner that he has. I have already referred to his affidavit. In paragraph 10, he has stated that on respondent No. 3's representation that the Custodian's orders to deliver possession of the premises to respondent No. 3 with police help were being flouted by the petitioners, eviction notice now complained of was sent to the petitioners. He has not chosen to state what the representation was and what material was placed before him on which he did or could act or under what law he acted or purported to act. Officers of the State can take action under some law or some rule or order lawfully made under a statute or law in force. No such law has been brought to our notice by the State. What orders of the Custodian were being flouted by the petitioners, and for the enforcement of which such a large police force was necessary or so much haste required, have again not been brought to our notice. It appears to me to be an astounding proposition that responsible officers of the State, on representations of interested parties and without any enquiry or opportunity to the person against whom action is sought to be taken and without knowing what law they are administering, can or should proceed to take such a drastic action as was taken in this case. As was said by their Lordships of the Privy Council in the case referred to above interference with the liberties and properties of citizens have to be supported by some law, and the State must support the legality of its actions before us. No such law was brought to our notice and I do not know of any under which the action taken could be justified. As I have said above, even the orders, which Mr. Shingal was supposed to be enforcing, have not been placed before us by the State. All that Mr. Shingal has stated in the affidavit is that he has acted on the representations of respondent No. 3 from which one may well infer

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that the orders were not before him. As this is an action taken by the officers of the State without any authority, and the petitioners have been deprived of their possession without lawful cause, my opinion is that the petitioners are entitled to the issue of a writ quashing the orders by which the petitioners were dispossessed and to an order for their possession being restored.

Mr. Shiv Charan Singh for respondent No. 3, submitted that possession had been delivered to Hafiz Mohammad Usman and, therefore, we should not issue a writ the effect of which is to disturb his possession. If there was no lawful authority or legal order by which the petitioners could be dispossessed, the mere fact that possession has been given to somebody else cannot be a ground for our not setting aside an illegal order and to direct the undoing of an act which has been done through a manifest illegality. No authority has been cited and no precedent has been shown or principle relied upon saying that in cases of this kind a writ would not issue. In a recent case, *Dr. S. K. Khanna v. Union of India* decided by a Bench of this Court of which the learned Chief Justice was a member, a premises was requisitioned for the benefit of a Magistrate who took possession of a part of it. The order of requisitioning was quashed by this Court on the ground that the procedure required by law for requisitioning of premises was not followed and the possession was ordered to be restored to the original occupant.

The officers of the State complained against have, in my opinion, acted unreasonably, arbitrarily, and in a manner not contemplated by law and the illegalities are so gross that we must exercise our powers under Article 226 of the Constitution and set aside the order for dispossessing the petitioners and as a consequence order possession to be restored to them.

In the result, I would allow this petition and would order that the petitioners be restored to possession of the property in dispute. Costs of the petitioners will be paid by the State. This order should be carried out at once. Counsel's fee Rs. 200.

E. WESON, C. J.—I agree.