

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

ON THE 2ND DAY OF JANUARY, 2023

BEFORE:

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI

WRIT PETITION (M/S) No. 3015 of 2022

BETWEEN:

Tejendra Singh & another. ...Petitioners

(By Mr. S.K. Posti, Senior Advocate, assisted by Mr. Ashutosh Posti,
Advocate for the petitioners)

AND:

Mohd. Anis Ahamd. ...Respondent

(There is no representation for the respondent)

JUDGMENT

This writ petition is directed against the judgment dated 26.09.2022 passed by learned Additional District Judge, Khatima, District Udham Singh Nagar in Misc. Civil Appeal No.55 of 2021 filed by respondent, whereby his temporary injunction application was allowed.

2. Facts of the case, shorn off unnecessary details, are as follows:

In the year 1995, respondent was inducted as tenant in respect of a shop, by its owner Shri Chandi Prasad. After death of Chandi Prasad, his son Vinod Prakash became owner of the shop and a fresh lease deed was executed between him and the respondent. Now, the shop is transferred by Vinod Prakash in favour of Tejendra Singh and Sukhjeet Singh.

Apprehending his forcible dispossession from the said shop, respondent filed a suit for permanent injunction, in which he filed an application under Order 39 Rule 1 & 2 C.P.C. Learned trial Court rejected his temporary injunction application, however, the Appeal filed by respondent under Order 43 Rule 1 (r) C.P.C. was allowed by learned Additional District Judge, Khatima, District Udham Singh Nagar. Feeling aggrieved by the judgment rendered by learned Appellate Court, landlords have filed this writ petition.

3. Learned Appellate Court has considered and discussed all relevant aspects in great detail and has given valid reasons for upsetting trial Court's finding on prima facie case. This Court concurs with the view taken by learned Appellate Court.

4. Learned Senior Counsel for the petitioners submits that the judgment rendered by Appellate Court is unsustainable, as it is contrary to the settled legal position that no injunction can be granted against true owner of the property. The said submission is without any force.

5. Although, it is settled position in law that injunction cannot be granted against true owner of the property, however, it is equally well settled in our jurisprudence governed by rule of law that even an unauthorized occupant can be ejected from a property only in the manner provided by law.

6. In the present case, upon landlords' refusal to accept rent, respondent started depositing rent in Court under Section 30 (1) of U.P. Urban Buildings

(Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "U.P. Act No. 13 of 1972"). Merely because the order passed under Section 30 (1) of U.P. Act No. 13 of 1972 was set aside on technical ground by the Revisional Court vide judgment dated 09.05.2017, will not entitle the landlords to forcibly evict the tenant.

7. Hon'ble Supreme Court in the case of Lallu Yeshwant Singh Vs. Rao Jagdish Singh, reported in AIR 1968 SC 620, has cited with approval the following observation made by Bombay High Court in the case of K.K. Verma Vs. Union of India, reported in AIR 1954 Bombay 358, "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. Under Section 9 of the Specific Relief Act, a tenant, who has ceased to be a tenant, may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to court under Section 9 and claim possession against the true owner".

8. Similarly, in the case of Midapur Zamindary Company Ltd. Vs. Kumar Naresh Narayan Roy, reported in AIR 1924 PC 144, the Privy Council held that in India persons are not permitted to take forcible possession. They must obtain such possession as they are entitled to by proper course.

9. Hon'ble Supreme Court in the case of "East India Hotels Ltd. Vs. Syndicate Bank", reported in 1992 Supp (2) SCC 29, observed that in our jurisprudence governed by rule of law even an unauthorized occupant can be ejected only in the manner provided by law. Paragraph nos. 30, 31 & 32 of the said judgment are extracted below:

30. What is meant by due course of law? Due course of law in each particular case means such an exercise of the powers by duly constituted tribunal or court in accordance with the procedure established by law under such safeguards for the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a tribunal competent by its constitution, that is by law of its creation, to pass upon the subject matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the State, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right determination of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense.

31. In Rudrappa v. Narsingrao [ILR (1905) 29 Bom 213 : 7 Bom LR 12] a Division Bench consisting of Sir L.H. Jenkins, C.J., as he then was, and Batchelor, J. held that the words "due course of law" in Section 9 of the Special Relief Act (old Act),

"as merely equivalent to the word 'legally' is, we think, to deprive them of a force and a significance which they carry on their very face. For a thing, which is perfectly legal, may still be by no means a thing done 'in due course of law'; To enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law, and the 'due course of law' means, we take it, the regular normal process and effect of the law operating on a matter which has been laid before it for adjudication."

(emphasis supplied)

In that case when the owner unilaterally dispossessed the tenant holding over, the Court upheld the decree for possession under Section 9. The Court further held that

“this, in our opinion, is the primary and natural meaning of the phrase, in strict compliance of law though it may be applied in a derivative or secondary sense to other proceedings held under the direct authority of the law; in this sense it may be said, for instance, that revenue or taxes are collected in due course of law.”

(emphasis supplied)

Speaking for a Full Bench of five Judges per majority of four in *Tomizuddin v. Ashrub Ali* [ILR 31 Cal 647 : 8 CWN 446] , Ghose, J. (one of concurring Judges) held that when tenancy was

“not put an end to, as the law requires, he remains upon the land as a tenant, and necessarily, if he is illegally ejected, he is entitled to claim possession as a tenant. His possession is very different from that of a person who enters into the land as a trespasser but if he is evicted illegally, he is entitled to be put back in possession according to provision of Section 9 of the Specific Relief Act though he has no title to the land.”

(emphasis supplied)

It is to be noted that the case relates to the tenant who is entitled to remain in possession as tenant holding over after the expiry of his lease but the ratio is significant that on expiry of the lease or licence no one can take possession unilaterally except in due course of law, though the respondent had no legal title. In *Jeewanmal v. Dr Dharamchand Khatri* [AIR 1971 Raj 84] , the Court discountenanced the incompetent Mandi Development Officer taking over possession of the land from the petitioners. Even the modicum of procedure followed by the Board to take possession was held to be “not in regular normal process”. In *Neyveli Lignite Corporation case* [AIR 1965 Mad 122 : ILR (1964) 1 Mad 676 : 77 MLW 387] , the respondent a tenant holding over who was given on lease to run a canteen, on expiry of the lease, did not vacate it, though asked to. The security officer with the assistance of the police had made an inventory of the articles and kept the furniture in a room therein and had taken possession. Though he was present, the tenant did not object to the taking of possession but later on issued a legal notice claiming damages from the Corporation. Thereafter the lock was removed and the goods were thrown out and the respondent filed a suit under Section 9 of the old Act. In that factual background the Division Bench held that the law recognises right to possession as a substantive right or interest which exists as certain legal incidence attached to it and it recognised such an advantage. As the respondent did not claim possession in the legal notice but merely claimed damages from that contract, it was inferred that he had no intention to retain possession. Accordingly the decree for possession was set aside. Far from helping the appellant this

decision supports the view that even a landlord under colour of title cannot dispossess the person in occupation except in due course of law. If the person dispossessed expresses animus possidendi he is entitled to the relief under Section 6. In *Anoopchand Revashanker Mehta v. Amerchand* [AIR 1951 Mys 101] , possession taken even in execution but not by a competent officer was held to be not in due course of law.

32. It is thus clear that the courts have viewed with askance any process other than strict compliance of law as valid in dispossessing a person in occupation of immovable property against his consent. The reason is obvious that it aims to preserve the efficacy of law and peace and order in the society relegating the jurisprudential perspectives to a suit under Section 5 of the Act and restitute possession to the person dispossessed, irrespective of the fact whether he has any title to possession or not.

10. In view of the aforesaid legal position, there is no scope for interference with the judgment rendered by learned Appellate Court.

11. Accordingly, the writ petition fails and is dismissed.

(MANOJ KUMAR TIWARI , J.)