CALCUTTA HIGH COURT

State of W.B

Vs.

Birendra Nath Basunia

A.F.O.O. No. 26 of 1953

(Chakravartti, C.J. and Lahiri, J.)

24.03.1955

JUDGMENT

Chakravartti, C.J.

1. The ground on which Sinha J. made the order appealed from in this case makes one examine the foundations and the extent of the rule that no one can be allowed to take the law into his own hands.

2. The facts are as follows: The area of land known as the Western Duars and now included in the Jalpaiguri District belonged originally to Bhutan, but was ceded by that country to the British Crown in 1865. At the time of its cession, the area was mostly a tract of forest land and only a small part of it was under cultivation. The jotes in respect of the cultivated area which were existing at the time came to be described as 'old mal jotes' and to them the Bengal Tenancy Act was made applicable to a limited extent. In course of time, further lands came to be settled and when leases of such lands were granted under the Waste Lands Rules of 1875, they were granted in the same form as leases of the old mal jotes. Leases of old mal jotes were renewable in a form which is now set out as Form F in the Bengal Waste Lands Manual, 1936. As the terms and conditions of the new leases granted under the Rules of 1875 were the same, Form F was adopted for their renewal as well which created the misleading impression that they too were old mal jotes. Leases granted under later rules were made renewable in other forms and are therefore distinguishable; but because the same renewal form was used for old mal jotes and jotes created under the Rules of 1875, the distinction between them disappeared.

3. The respondents are the sons and heirs of one Mahendra Nath Basunia who obtained a lease of a jote situated in the Western Duars at some date in the past. It was what is now Jote No.475, appertaining to Khatian No.77 of Mouza Purba Baragila, Police Station Nainaguri, District Jalpaiguri and comprised an area of 112.56 acres. The lease was renewed from time to time and the last renewal took place on 1-4-1935 when it was renewed for a period of 20 years ending on 31-3-1955. The renewal was in Form F which contains in clause 15 the following condition:

"If any of the lands covered by this lease be required for a public purpose, the Deputy

Commissioner shall be entitled to resume the same and at once to take possession thereof. You will be granted an abatement of rent for all lands as resumed calculated on the basis of the classification and rates by which your rent has been assessed. Compensation for building, standing crops or trees, for which a valuation had been paid to Government, will be awarded to you by the Deputy Commissioner, but no compensation is due to you For the land itself."

4. It is now a historical fact that in 1950, after serious and wide-spread disturbances in Eastern Pakistan, a very large number of persons migrated from that country into the State of West Bengal. The Government of this State found large bodies of those displaced persons wandering about helplessly in the boarder district of Jalpaiguri and considered it their duty to come to their assistance and settle them. But land was required for that purpose. Government decided that they would find the necessary land by exercising their right of resumption in respect of jotes which had been settled under leases reserving to them such right. Accordingly, proceedings were started For the resumption of the lands of Jote No.475 and other similar jotes, wholly or in part. In respect of Jote No.475, the Deputy Commissioner of Darjeeling issued a notice on Mahendra Nath Basunia on 12-2-1951, by which he was informed of Government's intention to resume 54.43 acres of land cut of the area of the jote For the rehabilitation of refugees from East Bengal and called upon to prefer his objections, if any, before the 28th of February next. Mahendra Nath was dead at the time, but the respondents accepted the notice as his sons and heirs and filed a petition of objection on 28-2-1951. As the matter was going to be a contested one, a regular resumption proceeding, being Case No.XIIIB/227 of 1950-51, was started. The Deputy/Commissioner heard arguments on 10-9-1951 and over-ruled the objections of the respondents as far as they were directed against the validity of the resumption proceedings. But he agreed that out of the 54.43 acres proposed to be resumed, 18.80 acres which were being held by Chukanidars ought to be excluded. Accordingly, by an order dated 30-9-1951, he directed resumption of only the remaining 35.23 acres which were fallow land held by the respondents in khas and on 23-10-1951, he passed the following further order:

"A.P. to take possession of the area resumed, viz., 35.23 acres only, excluding the area in possession of Chukanidars and submits R.S. Statement.

5. It appears that the respondents are large jotedars and hold 10 jotes in the Tahsil of Mainaguri alone, aggregating 315.53 acres of land. But they were not prepared to surrender even the small area of 18.80 acres. Upon coming to know of the above order of the Deputy Commissioner, they moved this Court under Article 226 of the Constitution and obtained from Bose, J. a Rule on the State of West Bengal and the Deputy Commissioner of Darjeeling, requiring them to show cause why the order for resumption should not be quashed or why they should not be restrained by an appropriate writ from taking possession of the lands concerned or why such other writ or direction or order should not issue as to this Court might seem fit and proper. The Rule came to be heard by Sinha, J., who made it absolute in a limited form and directed the State and the Deputy Commissioner to forbear from giving effect to the orders of the 30th September and the 23rd October, 1951, so far as those orders provided for possession to be assumed summarily and without recourse to a Court of law. It is against that Order that the State of West Bengal has preferred the present appeal.

6. The appellant State claims its right to resume the lands under Clause (15) of the lease which I have already set out, read with Section 3, Crown Grants Act, 1895, which reads thus:

> "All provisions, restrictions conditions and limitations over contained in any such grant or transfer as aforesaid, shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

7. It was contended before the learned trial Judge that in view of the existence of a public purpose for which the lands were needed the appellant State was entitled by virtue of the fifteenth condition of the lease not only to resume the lands but also to take possession of them, as authorized by the condition and further that by reason of the provisions of Section 3, Crown Grants Act, no bar constituted by any law could prevail over the terms of the lease or stand in the way of their enforcement. Sinha, J. did not accept the respondents' contention that rehabilitation of refugees was not a public purpose, nor their contention that the Crown Grants Act did not apply to the lease, nor their contention that they had acquired an occupancy right in the lands. He also overruled a contention that inasmuch as the fifteenth condition of the lease provided for resumption without compensation being paid For the land, it was repugnant to Article 31 (2) of the Constitution and accordingly void, however much Section 3, Crown Grants Act, might purport to protect it. The learned Judge, however, held that the Waste Lands Rules under which the lease had been granted were merely a body of executive directions which could not operate as law and that, consequently, the fifteenth condition of the lease, although it could not be questioned even if it offended against any statutory rule or enactment, could yet take effect only in accordance with its own meaning and to the extent it itself provided for. According to the learned Judge, the condition did not provide that the Crown could take possession summarily and by force. The learned Judge also held, in the alternative, that apart from Section 3, Crown Grants Act, the fifteenth condition of the lease could operate only as a contract and if so, the State, no less than a private individual, would have to go to a Court of law For the enforcement of its contractual rights.

8. Before us, Mr. Mukherjee, who appeared on behalf of the appellant State, contended that the learned Judge had not been right in holding that the State could not take possession of the resumed land without recourse to a Court of law. Mrs. Bose, who appeared on behalf of the respondents, resisted that contention, but she also argued that the Crown Grants Act did not apply to the lease and that even if it did, its effect was to exclude the operation of only the Transfer of Property Act and not that of any other law. It will be convenient to dispose of the respondents' additional 'contentions first.

9. I see no reason for holding that the Crown. Grants Act does not apply to the lease. It is clear from the history of the lands constituting the Western Duars that they were originally foreign territory and were ceded by the State to which they belonged to the British Crown. Thereupon they were "annexed to the Crown in 1865". The lands are not therefore held by the State in the ordinary right of a Zamindar, but are State property of the same class as the Crown lands of England. It is true that the affidavit-in-opposition filed on behalf of the State referred to the lands as lying "within the Government Khas Mahal", but it is obvious that the expression was loosely used. No misdescription in an affidavit can take away the true character of the lands or impose

upon them a character which they do not possess.

10. The second point is covered by the decision in the. case of '*Jnanendra Nath Nanda v. Jadunath Banerjee*[1],' where it was held that the effect of Section 3, Crown Grants Act, was to exclude the operation of not merely the Transfer of Property Act, but of all laws. That meaning appears to lie on the surface of the Act which mentions the applicability of the Transfer of Property Act and the power of Government to impose restrictions on grants and transfers made by it as two separate matters, both in the long title and in the preamble where the object of the Act is mentioned. The Act then proceeds to provide, by Section 2, For the exclusion of the Transfer of Property Act and, by Section 3, For the exclusion of "any rule of law, statute or enactment of the Legislature to the contrary". Mrs. Bose cited the decision of the Privy Council in '*Jagannath Baksh Singh v. United Provinces*[2]', and relied particularly on the observation of Lord Wright that "the whole Act (i.e. the Crown Grants Act) was intended to settle doubts as to the effect of the Transfer of Property Act, 1882 and must be read with reference to the general context" and that the general words of Section 3 would not be read in their apparent generality. But it must be remembered what question the Privy Council had before them. Their Lordships were dealing with a contention that in view of Section 3, Crown Grants Act, the Legislature, or at any rate a Provincial Legislature, had no power to make any law which would curtail the rights of a grantee of an earlier Crown grant and create new rights in his tenants, because to do so would be to affect the prerogative of the Crown by derogating from a grant made by it and also to affect the provisions of a Central Act. The impugned law was a tenancy Act and thus a law relating to 'land' which was a Provincial subject. The Privy Council repelled the contention urged before them by holding that there was no warrant in principle For the view that a competent Legislature could not, even in the absence of express prohibition, legislate so as to vary the effect of a Crown grant and as regards Section 3, Crown Grants Act, they held that it could not be construed to extend to the relations between the grantee of a Crown grant and his tenants and still less to limit the statutory competence of a Provincial Legislature to legislate on a subject assigned to it by the Constitution Act. I do not see that the decision of the Privy Council as to the power of a competent legislature to enact, in spite of Section 3, Crown Grants Act, future legislation affecting rights under an earlier grant must be held to have superseded the construction of the section, adopted by this Court, that as between the grantor and the grantee, it excludes the operation of all laws inconsistent with the terms of the grant, so long, of course, as the section may not itself be repealed or modified by subsequent legislation, whether expressly or impliedly. The Privy Council was clearly not so much construing Section 3 of the Act as holding that notwithstanding that provision, a competent legislature could affect the incidents of a grant by legislation subsequent to its date.

11. But let it be assumed that no law, other than the Transfer of Property Act, is excluded by the section. Is there any law which requires that even when a right to re-enter has

[1] AIR 1938 Cal 211

[2] AIR 1946 PC 127

arisen to an owner of land and the erstwhile lessee, continuing in possession, has become a trespasser in law, the owner must nevertheless betake himself m all circumstances to a Court of law For the purpose of obtaining possession and cannot take possession himself, even if he may be able to do so without using force or using no more force than reasonably necessary? Mr. Mukherjee who appeared on behalf of the appellant State submitted that there was no such law,

but beyond putting forward that contention in a general manner, he advanced no other argument. The question, however, opens up an interesting vista of enquiry.

12. It will be convenient to recall at this stage the two grounds on which Sinha, J. decided the case so that the first of them may be disposed of before we take up the enquiry called for by the second which is the same enquiry as I have indicated above. The first ground given by the learned Judge proceeds on a construction of the fifteenth condition of the lease. He has held that the Crown Grants Act does apply to the lease and it may be that its terms will pervail, notwithstanding any provision of law to the contrary, but, according to him, the terms themselves do not contain any provisions, authorizing summary assumption of possession without recourse to the processes of law. With great respect, I am unable to agree with the learned Judge. The fifteenth condition of the lease says that if the lands are required for a public purpose, the Deputy Commissioner "shall be entitled to resume the same and at once to take possession thereof". Under that language, the right to resume arises out of a requirement for a public purpose, but once that requirement is satisfied and the right has ariSen, the condition does not contemplate that any other proceeding should be interposed between the accrual of the right and the taking of possession. If there be no requirement for a public purpose, the first part of the condition will not be satisfied and the right to resume will itself not arise. But the condition contemplates a case where the lands are in fact required for a public purpose. I cannot imagine the condition contemplating nevertheless that even after the right to resume has arisen, the lessee is not to be expected to give up possession peaceably and that the contract contained in the condition is that where the lessee continues to remain on the land, though unrightfully, the Deputy Commissioner may not use even reasonable force to evict him, but must institute proceedings for recovery of possession. It should be remembered that we are considering a question of construction and trying to ascertain what the parties had in mind and what they have said in the condition. In my view, when the condition says that the Deputy Commissioner shall be entitled to resume the lands in a certain contingency and then says that he shall be entitled to resume the lands in a certain contingency and then says that he shall be entitled "at once to take possession thereof", it means that immediately on the contingency arising, the Deputy Commissioner shall be entitled to proceed to take physical possession of the lands and do all things necessary in that regard. It is obvious that when the parties were agreeing to the fifteenth condition, they were not contemplating that even after Government's right to resume the lands had arisen, the lessee might still offer resistance to the taking of possession. If the lessee does offer resistance in such circumstances in a particular case, it is implied in the second part of the condition that Government may nevertheless proceed to take possession, if they can do so. If in doing or trying to do so, they break the law, such breach will bring on its own consequences; but after the right to resume the lands has arisen, as it has been found by the learned Judge to have arisen in the present case, the lessee, still insisting on remaining on the lands, can rely on nothing in the fifteenth condition to show that it does not authorize Government to throw him out.

13. The second ground on which the learned Judge has proceeded is that if the Crown Grants Act does not apply to the lease, the right of Government under the fifteenth condition is only a contractual right which they cannot enforce otherwise than by due process of law. That ground raises the larger question which I have proposed to examine on the assumption that Section 3, Crown Grants Act, does not exclude the operation of any law other than the Transfer of Property Act. When a lessee continues to remain on the land after his, right to remain there has come to an end, is the lessor not entitled to throw him out by force if he can and must he resort to a Court of

law in all circumstances?

14. It will make for clarity to bear in mind that the appellant State is not making any case of a sovereign right. In England, when Crown leases are granted with a clause for re-entry, the Crown may, on the happening of the event contemplated, re-enter without taking any further proceeding, though it may also re enter without making any physical entry. There is a statutory provision concerning that right, contained in Section 25 of the Queen's Remembrancer Act, 1859, which reads thus:

> "When a right of reentry upon lands or other hereditaments shall have accrued to Her Majesty or her successors, such right may be exercised or enforced without any inquisition being taken or office being found, or any actual re-entry being made on the premises."

15. No enquiry as to any special right or prerogative of the Crown in regard to Crown lands is called for in the preSent case. But I may observe that in the case of leases in Form P to which the Crown Grants Act does apply, the effect of Section 3 of the Act, read with the fifteenth condition of the lease, appears to be the same as that of Section 25 of the English Act.

16. As regards the position under the general law between a lessor and his lessee, there is no rule or principle which makes it obligatory For the lessor to resort to Court and obtain an order for possession before he can put out the lessee who has refused to quit the land even after his right to remain on it has terminated. He is perfectly entitled to throw out the lessee himself, if he can and resume possession of his own property. It is true that no man can break the law even For the purpose of enforcing a legal right, but that is an obligation which a citizen owes to the State and not to the person who is unlawfully resisting his lawful claim. Such person cannot come to the Court and ask for protection from force being used against him. If the lessor, in taking forcible possession, exceeds the permissible limits of force, he will bring himself within the mischief of the criminal law and will have to answer to the State For the breach of public peace committed by him.
But that potential liability in the event of excess being committed gives no right to the lessee to seek an injunction against the lessor's entry upon the land on the basis that if such entry be attempted, he, who has no right to remain on the land, will still offer resistance and a breach of the peace will occur. In seeking to take forcible possession, the lessor will take the risk of being driven to commit a criminal offence, but there cannot possibly be any objection to his taking forcible possession, merely because it is forcible. Besides, no force or no appreciable force may be called for.
The lessor may succeed in entering upon the land during the abSence of the lessee or when he goes to take possession, the lessee may not find sufficient courage to offer active resistance. In any event, there can be no question of his not being entitled to use force at all, nor any question of his being required to arm himself with an order for possession from the Court as a matter of law.

17. That such is the true position will appear from the following statement in Halsbury's Laws of England, Hailsham Edition, Vol. 20, pp.280-81:

> "Where the tenant fails to deliver up possession, the landlord is entitled to re-enter and take possession, subject only to certain statutory restrictions. Thus he can re-enter where the tenant has abandoned possession, or where he can effect the entry peaceably; and even if he enters forcibly and is thus liable to criminal proceedings under the statutes, yet the tenant has no civil remedy against him in respect of the entry, or in respect of the eviction, if no more force than is necessary is used."

18. The passage undoubtedly speaks of remedy against entry or eviction after the same has been effected, but the case of a writ against attempts an entry is obviously a far stronger case For the lessor. We are considering a case where the lessee's right to remain on the land has expired. In such a case, if the lessee applies for a writ, he will have to do so on the basis that although he has no longer any right to remain on the land, he has no intention of quitting it and that his unrightfully occupation should be protected by a writ and that the use of force on the part of the lessor, which will be called for only if he himself offers unlawful resistance, should be forbidden by an order of the Court. Nothing can be less tenable.

19. The statutory restrictions referred to in the passage in Halsbury I have quoted are contained in a series of Statutes of Forcible Entry, enacted by the British Parliament. The chief of them and the one relevant For the present purpose is to be found in (1381) 5 Ric. 2, st 1, c.7 which provides that the entry shall not be made "with a strong hand or with a multitude of people, but only in peaceable and easy manner". That provision creates a crime. But a right to a civil action also was given by Section 6 of the statute 8 Hen. 6. Whether those provisions could be invoked against the lessor by a recusant lessee who was overstaying his tenure and whether they or any other laws took away the right of forcible entry on one's own land even when the right to re-enter had arisen, has been discussed in England in numerous cases. Although there was some difference of judicial opinion at one time, the law is now settled in favor of the lessor's right of forcible entry.

20. The leading case on the subject is *Hemmings v. Stoke Poges Golf Club Ltd*[4] a decision of the Court of Appeal. That was a case of a servant, refusing 'to vacate his quarters after the termination of his service, but while pointing out that distinction, the Court examined the case of a tenant as well and indeed reviewed the whole law on the subject. The relevant provisions of the English law were necessarily referred to, but the considerations on which the Court based its opinion were of a general character. There seems to be no reason why they should not apply in India.

21. The facts of the case were that a man called Hemmings was in the employ of a Golf

[4](1920) 1 KB, 720

club by which he was assigned a cottage rented by it where he lived with his wife. After some time, he left the service of the Club but refused to give up the cottage, although it was required for his successor and he had been given notice to quit. Thereupon, the Club instructed an estate agent to remove Hemmings and his wife and their furniture. The agent went to the cottage with three or four men but as neither Hemmings, nor his wife would leave voluntarily, some force had to be used. Hemmings was gently pushed out of the house. His wife seated herself on a chair with a baby in her arms and intimated that if she was to go, she would have to be tarried out. Thereupon, the estate agent's man raised the chair, carried it out across the threshold and

deposited the lady outside. The furniture was next removed. On these facts, Hemmings and his wife brought an action against the Club, as also the owner of the cottage who had participated in the eviction, for damages on the ground of assault, battery and forcible entry. The trial Judge, though himself of opinion that the action ought to fail, awarded a small amount as damages, because he felt bound by certain old authorities. On appeal, those authorities were over-ruled and the action was dismissed. In the course of separate judgments, all the three members of the Court of Appeal explained the law relating to a lessor's right of entry against a lessee whose right to remain on the land had terminated, but who was refusing to quit.

22. It appears that in certain earlier cases a view very similar to that taken by Sinha, J. in the present case had been taken. Thus in - '*Newton v. Harland*'[5], a case which had a very chequered course and was not finally decided, it was held by the majority of the Judges that where a tenant was holding over after his term had expired, the landlord would have to bring an action in order to regain possession and would be guilty of assult if he expelled the tenant by force. Following that case, it was held by Fry, J. in - '*Beddall v. Maitland*'[6], that although a lessee who had become a trespasser could recover no damages For the lessor's entry on the land, if he entered, because the possession was not legally his and could not also recover any damages For the force used in the entry, because the Statute of Richard II give no civil remedy, still a forcible entry would constitute an "independent wrongful act", even if the force used was no more than necessary and therefore the lessor could not use force to put the lessee out, but would have to appeal to the law for assistance. The same view was reiterated by the' learned Judge in- '*Edwick v. Hawkes*[7]',

23. In spite of these direct decisions, the general trend of judicial opinion appeared to the Court of Appeal in 'Hemmings' case',, to have been to the contrary. The learned Judges therefore proceeded to examine the position and concluded that the three cases I have referred to above had been wrongly decided. In the case before them, the defendants had ejected to proceed on the basis without any argument, that the acts done by them did constitute forcible entry. The learned Judges held that, even so, the making of such entry was within the rights of the defendants.

24. The principles laid down by the Court of Appeal are simple and I do not see why they should not apply in India. On the termination of a lease, the full rights in the leasehold property, including the right to possession, revert to the lessor. He then becomes entitled to enter his own land and take with it what order he likes. If the lessee continues to remain on the land with no longer any right to be there and refuses to vacate, the lessor

[5](1840) 1 Scott NR 474
[7](1881) 18 Ch D, 199
[6](1881) 17 Ch D.174

has every right to deal with him as a trespasser and use reasonable force against him for
his eviction in defense of his right to property and in assertion of his right to possession which right to property embraces. If the lessor in making a forcible entry infringes the criminal1 law, he will make himself liable to be punished under a prosecution, but he will infringe no right of the lessee. If he uses more than necessary, he may even expose himself to a civil liability to pay damages For the excess force used, but there can be no doubt of his right, as against the lessee to enter upon the land upon the expiration of the term and the accrual of the right of entry, by force if necessary. 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.

25. It would thus appear that if in making a forcible entry against the lessee who is squatting on

the land without any right to be there, the lessor takes the law into his own hands, he does so only in the Sense of acting on his own responsibility in accordance with the law and if peace is broken, it is only because the recalcitrant lessee offers resistance adversely to the law. It was observed by Bankes, L. J. in the case decided by the Court of Appeal that if the lessor must in such circumstances resort to the Court for an order for possession, "it must follow that the law confers upon the lawless trespasser a right of occupancy, the length of which is determined only by the law's delay." Scrutton, L. J. added that the danger of becoming liable to a prosecution might well deter people from exercising the right of forcible entry except by order of the Court, but he saw no reason to add to the existing privileges of trespassers on land which did not belong to them by holding that they would have a cause of action against the true owner, entitled to possession, who used a reasonable amount of force to turn them out.

26. I would emphasis again that we are only considering a question between a lessor and his lessee and the rights, if any possessed by the leassee himself in respect of forcible entry by the lessor after the lessee's right to remain on the land has ceased and the lessor's right to re-enter has arisen. If no right to re-enter has accrued, there can be no question of any entry, forcible or otherwise. But if the lessor's right to re-enter has ariSen, it would be extraordinary if the law were that the lessee might still approach the Court For the protection of his unlawful possession and that the Court would make a prohibitory order against the lessor at his instance.

27. Turning now to the facts of the present case, the position is not that whether Government's right to resume the lands has at all arisen remains still undecided and it is at that stage that the respondents are asking for a prohibitory order against forcible entry. Government initiated a regular resumption proceeding and, in that proceeding, made an order for resumption after hearing the respondents. Thereafter, the respondents came to this Court and their application has been heard. Sinha, J. has himself found that the existence of a proper public purpose, justifying resumption under the fifteenth condition of the lease, had been established. In other words, Government's right to resume the lands had arisen and the same had been proved in a Court of law in a proceeding initiated by the respondents themselves. If, even after those findings, the respondents are to be granted an order against Government, restraining them from taking possession of the lands so long as they do not obtain an order from a Court and it is to be granted on the ground that a party cannot take the law into his own hands and use force even for exercising a legal right, the position will be that a party who has been found to be a trespasser tells the Court that he does not propose to quit the land peaceably and that force will have to be used for throwing him out and that the Court then throws its protection round the trespasser and his unlawful occupation by the issue of a prohibitory order against the true and lawful owner. In my view, such a position is plainly untenable. Suppose, instead of making an application under Article 226 of the Constitution, the respondents had brought a suit for a declaration that the order for resumption was invalid and for an injunction against Government, restraining them from acting upon the order and taking possession of the lands: and suppose in such suit it was. held- what indeed has been held by the learned Judge in these proceedings - that, in the events which had happened, the right to resume the lands had accrued and consequently the order for resumption was perfectly valid; is it conceivable that any Court would, after coming to such findings, still grant the respondents the injunction wanted by them? The position in the present case is precisely the same. I am clearly of opinion that after the finding recorded by the learned Judge as to the existence of a public purpose and the accrual of the right of entry which was not challenged before us, there cannot possibly be a prohibitory order against Government at the

instance of the respondents. Government's right to resume the lands has been established. If so, their right of entry, even if forcibly exercised, will not be, in the language of Scrutton, L.J., "made ineffective or civilly unlawful by the force". Whether or not in taking forcible possession officers of Government will be driven to transgress the limits of the criminal law, is their risk; but there cannot be a prohibitory order against a rightful owner at the instance of a trespasser, restraining the former from exercising what is his legal right and what the trespasser has no lawful cause to deny or resist. The possibility of the use of force does not alter the position, for it ought not to be overlooked that no use of force will be necessary if the respondents quit peaceably the lands which they have no longer any right to occupy and that it will be necessary only if the respondents offer resistance which it will be unlawful for them to do. They cannot make their own intended wrong the basis of a prohibitory order against Government in derogation of their lawful rights. As regards Government obtaining an order from a Court, I find it difficult to understand why after the relevant issues have been gone into decided by this Court, another recourse to a Court should be necessary and what purpose it will serve.

28. For the reasons given above, this appeal must be and is allowed. The order made by the learned trial Judge is set aside and the respondents' application under Article 226 is dismissed.

29. There will be no order for costs.

Lahiri, J.

30. I agree.

Appeal allowed.