

DELHI HIGH COURT

Raj Singh

Vs.

Union of India, (Delhi)

LPA No. 30 of 1972.

(V. S. Deshpande and S. Rangarajan, JJ.)

11.5.1972

JUDGMENT

V. S. Deshpande, J.

1. *Ubi jus Ibi remedium* says the maxim. If so, converse should also be true, namely, "where there is no right, there is no remedy". It is also equally true that even where right exists it has to be enforced in due course of law. It cannot be enforced by self-help without recourse to law Nobody can be allowed to take the law into his own hands. If, therefore, a person without right to a property is dispossessed by the owner thereof directly and without recourse to judicial machinery, can the former successfully challenge the legality of the dispossession? This question which arises frequently in courts has to be decided in the light of the above principles which may appear to be conflicting but would be found to be reconcilable.

2. Shri Raj Singh through his predecessors-in-title held a plot of land In Meerut Cantonment on what are known as the "old grant" terms. A house has been built on the plot. He purchased the house in 1941 for Rs. 14000/-. On 4th November, 1970, however, he received the impugned notice in the following terms :-

"Whereas the land..... belongs to the President of India and is held by you on old grant terms under which Government are entitled to resume the said land;

And whereas the Government have decided to resume possession of the said land and to obtain possession of the structures now standing thereon....."

3. Now in exercise of the power herein before mentioned the Government give you this notice to quit and deliver possession of the aforesaid building site at 10 A. M. on

18th December, 1970 to the Military Estates Officer, Meerut Cantonment failing which Government will under all powers enabling them in that behalf resume on the said date the possession of the aforesaid property and your occupation and any right, easements and interests you may have in the said land as also in the buildings standing thereon shall thereupon cease as from that date.

"Take notice further that the Government, are prepared to pay and so offer you the sum of Rs. 407/- as the value of the erections standing on the said land. In case the amount of compensation is not acceptable to you, you are at liberty, if you so desire to remove the structures so as to leave the land in the same condition in which it was before the erections."

Sri Raj Singh regretted on 25th November 1970 that the possession of the property could not be handed over and returned the cheque of Rs. 407/- because

(a) The compensation offered was very inadequate,

And (b) the resumption of the property was not shown to be for a public purpose.

But the possession of the land and the house was taken by the Government on the 18th of December 1970 as previously intimated peaceably in the absence of Sri Raj Singh. On 4th April 1971 thereafter Sri Raj Singh filed a writ petition for quashing the impugned notice and for an order to the Government to pay fair compensation to him for the house and also directing the Government to grant him a lease of the said land in place of the old grant terms on which it was held. He did not, however, seek to recover the possession of the land and the house from the Government.

4. The writ petition was heard by Sachar, J. before whom the following grounds were urged in its support by the petitioner:-

(1) That the power of resumption given to the Government by the old grant terms was since then circumscribed by the subsequent decision of the President taken on the 20th March 1970 laying down that the land could be resumed only for a public purpose.

(2) The Government had no right to take the law into its own hands and should not have, therefore, taken possession directly from the petitioner without recourse to law.

(3) The possession of the land could be taken only by paying value of the building thereon. The compensation offered for the building is inadequate.

Pending the determination of the compensation, possession of the property could not be taken by the Government.

(4) The petitioner did not have any opportunity of being heard either before the resumption or before the offer of the compensation was made and with a view to help determination of the compensation for the house.

The above contentions were, however, rejected by the learned Single Judge who held that:-

(1) The resumption of the land and the house was for a public purpose, namely, providing accommodation to the families of the military officers.

(2) The power of resumption was exercised in accordance with law and the question of Government taking the law into its own hands did not arise.

(3) The determination of compensation was not a condition precedent to the resumption.

(4) The question of hearing the petitioner did not arise as the resumption was made in accordance with the old grant terms which are binding on the petitioner and the fixation of the compensation could be done in an independent proceeding where the petitioner would be heard.

5. In this appeal against the dismissal of the writ petition, Sri S.C. Gupta, learned counsel for the petitioner appellant, has argued that though the land belonged to the Government and could be resumed by it the house belonged to the petitioner appellant and could not be resumed by the Government except on payment of compensation. The action of the Government in taking possession of both without payment of compensation to the petitioner appellant was otherwise than in due course of law. The notice of resumption was thus illegal and should be quashed. Let us examine the argument carefully.

6. The land situated in the Cantonments and belonging to the Government used to be given to private persons for building houses thereon under what are called the "old grant" terms. These terms are contained in Order No. 179 of 1836 issued by the Governor General in Council and reproduced at pages 142 to 144 of the Military Lands Manual (1943). The preamble and regulations 6 and 7 contained in the said Order are alone relevant and are as below:-

"The Governor General of India in Council is pleased to rescind the various orders now in force in this Presidency in regard of the occupation of ground and

the disposal of premises or buildings, situated within the limits of military cantonments, and to substitute for them the following regulations, which is to have effect from the date of its promulgation at the different stations of the Bengal Army:-

.....

No ground will be granted except on the following conditions, which are to be subscribed by every grantee, as well as by those to whom, his grant may subsequently be transferred:-

1st. - The Government to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorized to be erected.

2nd. - The ground, being in every case the property of Government cannot be sold by the grantee; but houses or other property thereon situated may be transferred by one military or medical, officer to another without restriction, except in the case of reliefs, when, if required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration.

3rd. - If the ground has been built upon, the buildings are not to, be disposed of to any person of whatever description, who does not belong to the army, until the consent of the officer Commanding the station shall have been previously obtained under his hand.

4th. - When it is proposed, with the consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed Rs. 5,000, the sale must not be effected, until the sanction of Government shall have been obtained through His Excellency the Commander in Chief.

7. All houses in a military cantonment, being the property of persons not belonging to the army, which may be deemed by the Commanding Officer of the station suitable, from their Locality, for the accommodation of officers, shall be claimable for purchase or for hire at the option of the owner; in the former case at a valuation and in the latter at a rent to be fixed, in case of the parties disagreeing, by a Committee of, Arbitration constituted as follows."

What is the nature of the regulations contained in Order 179 of 1836? Two answers are possible, namely.

(a) That they are statutory regulations issued under section 43 of the Government of India Act, 1833; and

(b) That they are only administrative instructions not issued under any statute.

In support of the first view, it may be pointed out that section 43 of the Government of India Act, 1833 expressly stated as follows:

"That the said Governor General in Council shall have power to make Laws and Regulations for repealing amending, or altering any Laws and Regulations whatever now in force".

The preamble of Order 179 of 1836 purports to rescind the various orders in force till then and to substitute for them the regulations promulgated thereby.

8. Secondly the word "regulations" was used for statutory regulations In the later 18th and the earlier 19th century of the regime of the East India Company supervised by the British Government in India. The power to issue regulations was given to the Government General by the Regulating Act, 1772 as also by the subsequent Acts including the Government of India Act, 1833. The first two Volumes of the Statute book of those years contained the Bengal Regulations and it is only in the third volume that Acts occur along with the Regulations. The position was analogous to the one which obtained in medieval England prior to the emergence of the formal Parliamentary enactments. C. K. Allen in his "Law in the Making", 7th Edn., page 436, quotes the following observation of Professor Plucknett :-

"The great concern of the government was to govern, and if in the course of its duties legislation became necessary, then it was affected simply and quickly without any complication or formalities."

The learned author then states:-

These governmental acts go by a bewildering variety of names..... 'statue' is a less frequent term than most of the others, and seems to have meant 'something decided on', a provision of a public document, rather than the whole document itself."

Section 45 of the Government of India Act, 1833 states that "all Laws and Regulations made as aforesaid, shall be of the same force and effect within and throughout the said Territories as any Act of Parliament would " Section 65 of the Government of India Act, 1858 continued "all Acts and provisions now (then) in force". The regulations contained in Order 179 of 1836 were "provisions" of statutory nature and were continued by the Act of 1858. Section 130 of the Government of India Act, 1915 repealed the Government of India Act, 1858 but provided that the repeal was not to

affect the validity of any "Regulations" issued there under and in force at the commencement of the Government of India Act, 1915 These regulations, therefore, continued in force thereafter. On the principle embodied in section 24 of the General Clauses Act, 1897. These Regulations were continued in force unless and until they were repealed or they were inconsistent with some later enactment. They would, therefore, be deemed to be in force in view of Article 272(1) of the Constitution.

9. Thirdly, the words in the preamble of the Order such as "to rescind the various orders now in force", the following regulations, which is to have effect from the date of its promulgation" indicate that the orders which were rescinded and also the regulations which were promulgated were both of a statutory nature. Such language is not used for mere administrative instructions.

Fourthly, all or almost all Bengal Regulations have been regarded as statutory in their nature. These are also Bengal Regulations and there is no reason why they alone should be regarded as purely administrative.

10. Lastly, it is true that the preamble does not expressly state that the regulations were issued under section 43 of the Government of India Act, 1833. But it is well established that if the power to issue regulations vested in the Governor General in Council hereunder, then even without recital of the source of the power the regulations would be deemed to have been issued there under. The same view has been expressed by the Allahabad High Court in

(1) *Shri Narain Khanna v. The Secretary of State for India in Council*, first¹ decided on 12th September, 1968 by Banerji, Acting C.J. and Verma, J., and

(2) *Smt. Bhagwati Devi v. The President of India*, Civil Misc. ² decided on 26th November 1971 by Lokur, J.

On the other hand, the Central Government, or rather their legal advisers do not seem to have appreciated the above legal position but have proceeded on the assumption that these are executive orders and not statutory regulations. The reason seems to be that these regulations were repeated in Bengal Army Regulations, 1855, 1873, 1880, Army Regulations India, 1887 and the Cantonment Codes of 1895 and 1912. It is to be investigated whether the latter were issued under any statute or not. When the Cantonments Act, 1925 was passed, clauses (a) and (b) of sub-section (2) of section 280 empowered the Central Government to make rules relating to the grant of cantonment land and conditions on which it should be granted. It is to be noted that by the time the Cantonment Codes of 1895 and 1912 came to be formed, the policy of the Government had undergone a change. It was then decided that the cantonment land should be granted not on the 'old grant' terms but as leases. But the 'old grant' terms continued to govern the grants previously made. This is shown by rule 6(iii) of the

Cantonment Land, Administration Rules, 1937 which is as follows :-

"Clause 'B' (3) Land, which is held by any private person under the, provisions of these rules, or which is held or may be presumed, to be held under the provisions of the Cantonment Code of 1899 or 1912, or under any executive orders previously in force, subject to conditions under which the Central Government reserve, or have reserved, to themselves the proprietary rights in the soil."

The words 'executive orders previously in force' used therein would show that the 'old grant' terms were understood to be executive in their nature. Similarly on 20th March 1970, the President issued in executive order laying down the policy for resumption of grants and leases. The very fact that under The 'old grant' terms, a grant could be resumed at the pleasure of the Government while under the Presidential order it could be resumed according to the 'old grant' terms provided that the resumption was necessary for a public purpose would show that the Presidential order modified the 'old grant' terms administratively. In so far as such modification was inconsistent with the 'old grant' terms, it could be effective only on the assumption that the 'old grant' terms themselves were administrative. The Allahabad High Court in *Ragubar Dayal v. Secretary of State for India in Council*,³ and *Thakur. J. of the High Court of Himachal Pradesh in Durga Dass Sud v. Union of India*,⁴ have expressed the view that the 'old grant' terms were executive in their nature. In the present case it is not necessary to decide which of the above two views is to be preferred. For, our decision would be the same on either of the two alternative hypotheses.

11. We first consider the argument of the petitioner appellant on the assumption that the Order 179 of 1836 was a 'law'. If so, the President of India who now stands in the place of the Governor General in Council in view of section 64 of the Government of India Act, 1958 is the statutory authority entitled to work out the rights of the Government there under. These rights are to be found on a construction of the fir condition embodied in regulation 6 contained in the order. It says that:

- (1) Government is to retain the power of resumption,
- (2) at any time,
- (3) on giving one month's notice, and
- (4) paying the value of such buildings as may have been authorized to be erected.

The word 'resume' means to retake possession of property so that the possession is restored to the authority who had originally given it to the grantee. The power to

resume possession 'at any time' means that the grant did not confer any interest in or right to the land in the grantee. The only conditions to be complied with by the Government in resuming the land are, therefore, (3) one month's notice and (4) payment of compensation for the house. The requisite notice has been given. Learned counsel for the appellant, however, argues that Government could not have taken possession of the house without paying adequate compensation to the appellant. This argument assumes that the land could be resumed by the Government unconditionally. It nevertheless purports to distinguish the house from the land and say that the possession of the house could not be taken. It virtually means, therefore, that the possession of the land also could not be taken. For the land could not be separated from the house. There are only two alternative constructions of the first condition of regulation 6. Either the Government could resume the possession of the land and the house together or the Government could not resume the possession either of the land or of the house. The first construction is the natural one. It accords with the maxim *quicquid plantatur solo solo cedit* (whatever is affixed to the soil becomes, in contemplation of law, a part of it and is subject to the same rights of property as the soil itself), If, therefore, the Government had the absolute right to the resumption of the land, then it had also the absolute right to the resumption of everything which is attached to it. For, a person who knowingly builds on land which he knows could be resumed by the Government at any time cannot complain if the Government takes away the land. The Government does not purport to take away the house but it inevitably goes with the land. The well known exception to this rule is the doctrine of acquiescence formulated by the House of Lords in the leading case *Ramdeo v. Dyson*,⁵ If the owner of the land allows a person to violate his ownership by building on the land and assents to such violation, then he would be prevented later from setting up his right to the land to the damage of the person who built on the land. The owner would then be disabled from taking possession of the land itself because he cannot take possession of the house and the two cannot be separated. This rule has been followed in India by the Judicial Committee of the Privy Council in *Beni Ram v. Kundun Lal*,⁶ But the doctrine of acquiescence is itself subject to the counter-exception that the party building on the land of another without any acquiescence on the part of the other is unable to prevent himself from being evicted by the owner. His only right is to remove the building from the land. As the first condition of regulation 6 had made it clear that the power of resumption was absolute, the grantee could not have any reason to think that by building up on the land he could prevent the Government from resuming the land. On the contrary, a reading of the condition must have made it clear to him that the building would go with the land on resumption and the only right of the grantee would be to claim compensation.

12. The power of resumption is a special power given by a statutory regulation. It would be presumed, therefore, that the enforcement of the power is also to be made under the same statutory regulation. For, there is nothing to show that the statutory

authority was required to go outside the statutory regulation to a civil court or to some other authority for such enforcement. The statutory regulation is self-contained. For the power of resumption simply means that the status quo ante before the grant comes into being. It cannot be said, therefore, that the Government took the law into its own hands or that the Government was acting without recourse to law in resuming the land and the house. The regulation is a special law. It did not contemplate the intervention of any judicial or quasi-judicial authority between the Government and the grantee. The total absence of any interest or right in or to the land disabled the grantee from claiming that the Government should file a suit against him to resume possession of the land and the house. There was no dispute to be decided between the grant or and the grantee regarding the resumption. This explains the direct exercise of the power of resumption by the Government under the statutory regulation. No objection can, therefore, be taken to it. According to Article 31 (5)(a) of the Constitution the regulation is existing law' prior to the Constitution, Clause (2) of Article 31 of the Constitution does not, therefore apply to it. As the regulation clearly gives the right to directly resume the land and the house the petitioner appellant has been deprived of his house 'by authority of law' within the meaning of clause (1) of Article 31. For the same reason the right of the petitioner appellant to hold the house property under Article 19(1)(f) of the Constitution is subjected to the reasonable restriction under Article 19(5) thereof in the interest of the general public when the Government was allowed to resume the land along with the 'house to provide accommodation for the families of the army officers. On this view of the matter, therefore, the petitioner appellant cannot object to the resumption.

13. Alternatively, we may assume that the regulations contained in Order 179 of 1836 were not statutory but only executive. If so, the grant of the land was a legal transaction between two parties. It is called a ' grant' because it is not a transfer. It is different from a transfer in many respects. Firstly, its terms do not fit in with any recognized mode or transfer such as sale or lease. Secondly, it is governed by a special Act. The Government Grants Act, 1895 Section 2 thereof makes the Transfer of Property Act, 1882 inapplicable to Government grants. Section 3 thereof ensures that all provisions, restrictions, conditions and limitations ever 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." The power of resumption is a special one contained only in the grant. The procedure for its enforcement is also, therefore, presumably contained in the grant itself which appears to be self contained. Neither the Code of Civil Procedure nor the Court Fees Act nor the Suits Valuation Act nor the Public Premises (Eviction off Unauthorized Occupants) Act, 1958 and 1971 contemplates action for resumption being taken there under. As section 3 of the Government Grants Act gives the "old grant" terms full operation notwithstanding any statute to the contrary, it would be reasonable to think that the resumption of the land and the house is to be made directly by the

Government under the "old grant" terms without having recourse to any outside machinery. If the first condition of regulation 6 of Order 179 of 1836, therefore, authorizes the Government directly to resume the land without recourse to any other law, then it cannot be argued that the Government should have taken recourse to any of these legal provisions. The condition is a part of the contract or transaction between the Government and the grantee. What is the nature of this transaction? It is not a transfer or a lease. For, the essence of a transfer or a lease is that the transferee acquires an interest in or a right to the property so transferred. As the Government is empowered to resume the land at any time on giving one month's notice and as the building has to go with the land being a part of it, the transaction can be only a bare license which is defined in section 52 of the Easements Act, 1882 as follows:

"License' defined. - Where one person grants to another, or to a definite number of other persons a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

It is to be noted that the word "possession" is not used in section 52, The reason is that ownership consists of various elements the most important of which is possession. "Possession" says Hearing "is the objective realization of ownership". Possession consists of two elements. Namely, (1) corpus possession is and (2) animus possidendi. It is only when the property is in physical possession of a person who intends to 'keep it in his own right in exclusion to others that the person can be said to be in possession of the property. Such possession may be called "legal or juridical" possession as distinguished from merely physical possession or custody. When the land was given to the grantee under the first condition of regulation 6, no right to or interest in it was given to him. He was, therefore, given only physical possession but not legal possession. He was, therefore, only a licensee without any right to or interest in the land. Late Justice Holmes in his "Common Law". Lecture VI page 213, asked the question. "Is possession a fact or a right" ? After considering the relationship of possession to the ownership, Holmes concludes at page 246 that "the owner is allowed to exclude all, and is accountable to no one. The possessor is allowed to exclude all but one, and is accountable to no one but him "This leads to the conclusion that a mere possessor has no right against the owner unless the owner has given him one, Possession without right is mere occupation. There is no legal protection to mere occupation against the owner. The law protects only rights. This is why J. L. Parker, learned Editor of Salmond on Jurisprudence, 9th Edition, observes at pages 412-413 thereof as follows:

"As the remedy develops and becomes more popular, there is a tendency for the purely physical element of possession to become less

important.....Possession becomes more and a question of right, and less a matter of infra-jural fact. At the same time, as remedies multiply it becomes increasingly important to ask, 'what kind of possession ? 'Possession for the purpose of what action'?'".

Dias on Jurisprudence, 3rd Edition, at page 348 also concludes that:

"There is nothing in the factual situation that determines the incidence of possession. It is determined on the basis of title because, as between the two of them, it is the person entitled to the land who deserves compensation by means of an action in trespass against the ether. If it is sought to establish possession without proof of title, the exclusiveness of the plaintiff's possession depends on the facts."

Therefore, a bare licensee whose license is revocable at the pleasure of the licensor cannot be said to have any legal possession over the land as against the licensor though he may have such possession against all others. *Piraya Lal v. Jia Rani*, ⁷ decided on 10-2-1972). He is only an occupier without any right to or interest in the land. If the grant had not preserved the right of resumption to the Government at pleasure then only the building of a house on the land by the grantee could be considered as an estoppels preventing the Government from resuming the land. It was precisely to exclude such an estoppels that such a right was reserved to the Government in the grant itself

14. It is in these circumstances that we have to consider whether the petitioner appellant had any right to keep the possession of the land and the house after the land was resumed by the Government. The effect of resumption of the land by the Government was stated in the following words by the *Privy Council in Secretary of State v. Sri Narain Khanna* ⁸

"It necessarily follows that, as from the date of resumption, the respondent ceased to have any right to keep the buildings on the land."

The grantee had of course the right to remove the building before resumption - This he has not done. Can he insist that the Government should have either filed a suit against him or resorted to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act and that Government could not have taken direct possession of the land and the house from him ? We have already observed above that section 3 of the Government Grants Act disables the petitioner appellant from pointing out that the power of direct resumption of the land and the house given to the grantor by the "old grant" terms is contrary to Civil Procedure Code or the Public Premises (Eviction of

Unauthorized Occupants) Act, 1958 and 1971 or section 6 of the Specific Relief Act, or to any other law. But even if it is assumed that these laws were applicable, the total absence of any right to or interest in the land on the part of the petitioner appellant would still leave him without any remedy against the Government. For, mere prior possession gave him a right against everyone else other than the owner. But as against the owner he was not entitled to retain possession. This is strikingly brought out by the provisions of section 6 of the Specific Relief Act, sub-sections (1) and (2) of which are as follows:

"(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought-

(a) After the expiry of six months from the date of dispossession; or

(b) Against the Government."

15. It will be seen that the petitioner appellant could have availed himself of the remedy under section 6 only if he was evicted "otherwise than in due course of law". Shri S.C. Gupta contended that direct resumption of possession of land and house by the Government was "otherwise than in due course of law. "For him, "law" meant the Civil Procedure Code or the Public Premises (Eviction of Unauthorized Occupants) Act. But the procedure of resumption under the "old grant" terms has itself been legalized by section 3 of the Government Grants Act. It cannot, therefore, be said to be "otherwise than in due course of law". Secondly, it is only a person who is "dispossessed" from immovable property who can avail himself of the remedy under section 6. The word "possession" however, in this context, means "legal or juridical" possession. The physical possession must be combined with the right to possess. By the terms of the grant, the grantee knew that he had no right to possess the land after the grantor chose to resume it. Out of the two elements constituting possession, therefore, he had only one, namely, corpus possession is. He did not have the other, namely, animus possidendi. Since he did not have the intention to exclude the owner after resumption, he had no right to keep possession after the resumption. He could not have, therefore, invoked the possessory remedy under section 6 of the Specific Relief Act *A fortiori*, he cannot invoke the discretionary remedy under Article 226 of the Constitution.

16. Building of the house on the land granted to him could have made the license irrevocable under section 60 of the Easements Act. But the condition of the grant itself was that the land could be resumed at any time. This prevented the license being

irrevocable. Position of a lessee whose tenancy has been determined is said to be better than that of a bare licensee. For, the quantum lessee had interest in the property at one time. He would, therefore, expect the lessor to go to Court for obtaining possession from him. But this is not an invariable rule. There is nothing to prevent the landlord from re-entering on the land and taking possession peaceably from the tenant "subject only to certain statutory restrictions on forcible entry" (23, Halsbury's Laws of England, paragraph 1446 at page 705) In *Hemmings v. The Stoke Poges Golf Club Limited*⁹ the Court of Appeal held that even if the landlord were to make what would be technically a "forcible entry" within the meaning of the statute concerned, the tenant would not be able to sue him for assault, battery and trespass. This decision was followed in *State of West Bengal v. Birendra Nah Basunia*, where Chakravarti C.J. and Lahiri J. held that the landlord can take possession of the land from the quantum tenant and cannot be always driven to a court of law. This decision was followed by Sinha J. in *Mahindra L. Goswami v. R. N. Bose*,¹¹ If even an ex-lessee cannot resist taking of peaceful possession by the landlord, a *fortiori*, a bare licensee like the petitioner appellant cannot do so.

17. In *Darbar Shri Vira Vala Surag Vala Vadia v. State of Saurashtra*,¹² the grant was not an absolute one. It stood terminated when the capacity of the grantee as a cannot came to an end. It could, therefore, be resumed by the grantor. No question of infringement of any fundamental right of the grantee arose as the grantee had no right to or interest in the land.

18. In *State of Orissa v. Ram Chandra Dev*,¹³ the grant was by way of remuneration for services. It came to an end when the services ceased to be rendered. The grantor therefore resumed possession of the land directly without going to court. In a writ petition by the dispossessed grantee, the High Court appeared to have assumed that the grantor was not entitled to seek recovery of possession of the property, after resuming the grant in question. But the Supreme Court expressed a different view in paragraph 11 in the following words :-

"Ordinarily where property has been granted by the State on conditions which make the grant resumable, after resumption it is the grantee who moves the Court for appropriate relief, and that proceeds on the basis that the grantor State which has reserved to itself the right to resume may, after exercising its right, seek to recover possession of the property without filing a suit. But apart from this aspect of the matter. It is difficult to see how the High Court was justified in issuing the writ in the present appeals the inevitable consequence of which would be that the respondents would remain in possession of the property until the appellant files a suit against them; and that, in our opinion, would not be justified unless questions of title are determined and it is held that the appellant

must file a suit before the respondents can be dispossessed. It appears that in issuing the writ in favor of the respondents, the High Court failed to appreciate the legal, effect of its conclusion that questions of title cannot be tried in writ proceedings. Once it is held that the question of title cannot be determined, it follows that no right can be postulated in favor of the respondents on the basis of which a writ can be issued in their favors under Article 226."

In paragraph 13, the Court distinguished certain decisions cited by the learned counsel for the grantee on the ground that executive action not founded on any law was used in those cases to obtain possession. The action of resumption cannot be said to be such executive action not founded on any law.

19. For the same reasons, three other decisions relied upon by Shri S. C Gupta are distinguishable. In *Bishan Das v. The State of Punjab* ¹⁴ the grant of land did not contain any condition as to the buildings to be constructed on it. The construction of the buildings on the land, therefore, seemed to make the license irrevocable. The grantees could not, therefore, be removed from the land by an executive fist. For, their rights to the building had to be determined outside the terms of the grant and this could be done only by a court of law or by some other judicial machinery. In *Wire-Netting Stores v. The Delhi Development Authority*, ¹⁵ also the license in respect of the land became irrevocable under section 60 of the Indian Easements Act due to the permitted constructions made thereon because there was no absolute right of resumption of land reserved to the Delhi Development Authority. In *Mohanlal v. The State of Punjab*, ¹⁶ the lessees, claimed that they mere entitled to have the lease renewed for a further term of 5 years. That was a legal contention which had to be inquired into by a court of law or a judicial authority.

20. The above discussion leads to the following conclusions

(1) Mere physical possession without any claim of right to retain it against the owner confers no right on the possessor. The claim of right may be only a semblance. Nevertheless, there must be a claim, however plausible it may be. If there is no claim of right at all, then the possession is not legal possession.

(2) A person who is not in legal possession and cannot claim to have any semblance of right against the true owner will not be entitled in law to retain possession against the true owner.

(3) The true owner can peaceably recover possession from a bare licensee or a person in physical possession without a claim of right against the owner directly without going to court of law or invoking the provisions of Public Premises

(Eviction of Unauthorized Occupants) Act.

(4) If however, the person in physical possession without any right resists the taking of possession and creates a law and order problem, then the owner would not be justified in having recourse to violence even in the enforcement of his right. The provisions of Criminal Procedure Code, Sections 144 and 145, mould perhaps be invoked by either party. Alternatively, the owner may resort to a civil suit of proceeding under the Public Premises Eviction of Unauthorized Occupants) Acts.

(5) The taking of peaceful possession by the owner using just the necessary force incidental to the exercise of legal authority does not amount to taking the law into his own hands. It is a legal process and the possession in such a case is taken in due course of law specially when the terms of the 'grant' etc expressly give the right of resumption to the grantor.

(6) In view of the provisions of the Government Grants Act, 1895 and section 6(2)(b) of the Specific Relief Act, 1963, the position of the Government as the owner of the land against a grantee of Government land is better than the position of an ordinary owner against his grantee.

(7) A trespasser is not under the disability of being in mere permissible physical possession only as is the bare licensee whose license is not irrevocable.

21. We are, therefore, of the view that the possession of the land and the house was taken by the Government from the petitioner appellant in due course of law. The petitioner appellant is not entitled to any remedy against the Government either by way of writ petition or a suit or under section 6 of the Specific Relief Act. The appeal is, therefore, dismissed but in the circumstances without any order as to costs.

22. The question of compensation would have to be considered in an independent proceeding between the ex-grantee and the Government in the light of the provisions of the first condition of regulation 6 and the whole of regulation 7 of Order 179 of 1936. The question whether the Government must pay compensation or whether they can take the stand that the grantee can remove the superstructure if the Government do not want. It would be considered there. Further, the application of regulation 7 to the determination of compensation in a resumption proceeding as distinguished from a proceeding for the acquisition of the house under the Land Acquisition Act will also be considered therein. Just as the learned Single Judge has not decided this question we would also leave it open for decision in such future proceeding.

Appeal dismissed.

Cases Referred.

1. Appeal No. 166 of 1935
2. Writ Petition No. 520 of 1969
3. ILR 46 Allahabad
4. AIR 1972 Himachal Pradesh 26,
5. (1865) 149 R. R. 543 at 549.
6. (1898) 26 I. A. 58 at 63.
7. R. F. A 88-D of 1962
8. (AIR 1942 PC 35):
9. (1920) I K. B. 720,
10. AIR 1955 Calcutta 601,
11. All 1956 Calcutta 443.
- 12 AIR 1967 Supreme Court 346,
13. AIR 1464 Supreme Court 685,
14. (1962) 2 SCR 69,
15. 1969 (3) SCC 415,
- 16 1970 All India Rent Control Journal 95,